

905  
No. 2430

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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PARROTT & COMPANY, a Corporation,  
Appellant,

vs.

DOLBADARN CASTLE SHIPPING COMPANY,  
LIMITED, a Corporation, Claimant of the  
British Bark "DOLBADARN CASTLE,"  
Her Tackle, Apparel and Furniture,  
Appellee.

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Apostles.

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Upon Appeal from the United States District Court  
for the Northern District of California,  
First Division.

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Filed

JUL - 3 1914

F. D. Monckton,  
Clerk.



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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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UNITED STATES OF AMERICA.

*District Court of the United States, Northern District of California.*

CLERK'S OFFICE.

No. 15,073.

PARROTT & COMPANY, a Corp.,

Libelant,

vs.

The British Bark "DOLBADARN CASTLE," etc.,  
Respondent.

**Praeceptum [for Certified Apostles on Appeal].**

To the Clerk of Said Court:

Sir: Libelant herein having appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the final Decree of this Court in the above-entitled cause, you are hereby requested to prepare and certify the Apostles on Appeal, to be filed in said Appellate Court on or before the first day of June, 1914, said Apostles to be prepared in accordance with Rule 4 of the "Rules in Admiralty" of said Appellate Court.

ANDROS & HENGSTLER,  
Proctors for Libelant.

[Endorsed]: Filed May 16, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [1\*]

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\*Page number appearing at foot of page of original certified Record.



*In the District Court of the United States, for the  
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,073.

PARROTT & COMPANY, a Corporation,  
Libelant,

vs.

The British Bark "DOLBADARN CASTLE," Her  
Tackle, Apparel and Furniture,  
Respondent.

**Statement of Clerk U. S. District Court.**

**PARTIES.**

LIBELANT: Parrott & Company, a Corporation.

RESPONDENT: The British Bark "Dolbadarn  
Castle," Her Tackle, Apparel and Furniture.

CLAIMANT: Dolbadarn Castle Shipping Com-  
pany, Limited, a Corporation. [2]

**PROCTORS**

for

LIBELANT: Messrs. Andros and Hengstler, San  
Francisco, California.

RESPONDENT and CLAIMANT: Ira S. Lillick,  
Esquire, San Francisco, California.

**PROCEEDINGS.**

1910.

September 12. Filed verified Libel, to recover dam-  
ages. Issued Monition for attach-  
ment of the Bark "Dolbadarn  
Castle," which said Monition was  
afterwards, on the 13th day of



September, 1910, returned and filed with the following return of the United States Marshal endorsed thereon: "In obedience to the within Monition I attached the British Bark 'Dolbadarn Castle,' therein described, on the 12th day of September, 1910, and have given due notice to all persons claiming the same that this Court will, on the 27th day of September, 190— (if that day be a day of jurisdiction; if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same. I further return that I [3] posted a notice of attachment on said British Bark 'Dolbadarn' and handed a copy of this Monition to the Captain of said ship. I also placed a keeper thereon.

Attachment made in Bay of San Francisco.

C. T. ELLIOTT,

United States Marshal.

By Paul J. Arnerich,

Deputy.

San Francisco, Cal., Sept. 12th, 1910."

September 14. Filed Claim of Dolbadarn Castle Shipping Company, Ltd.

Filed Stipulation for the release of Bark "Dolbadarn Castle," in the sum of \$3,000.00 with the United States Fidelity & Guaranty Co. as surety.

28. Filed depositions of John Baxter, John Owen, Jan Olsson and Robert Conchar, taken on behalf of respondent, before Jas. P. Brown, U. S. Commissioner.

November 4. Filed Answer of The Dolbadarn Castle Shipping Company, Limited, owner of the British Bark "Dolbadarn Castle," together with Interrogatories propounded to libellant.

December 13. Filed exceptions of libellant to claimant's Answer and Interrogatories.  
[4]

1911.

June 5. The exceptions to the Answer and Interrogatories filed herein this day came on for hearing in the above-entitled court, before Hon. John J. De Haven, Judge, and after argument the matter was submitted to the Court for decision.

8. Ordered Exceptions to the Answer and Interrogatories overruled.

1912.

- January 2. Filed claimant's exceptions to Answer filed by libelant to the Interrogatories propounded by claimant.
- January 27. The exceptions to the Answer filed by libelant to the Interrogatories propounded by claimant, this day came on for hearing in the District Court of the United States, for the Northern District of California, at San Francisco, before Hon. R. S. Bean, Judge, and after argument, the matter was submitted to the Court for decision.
- February 3. Ordered exceptions to Answer filed by libelant to the Interrogatories propounded by claimant overruled. [5]

1913.

- November 18. The above-entitled cause this day came on for hearing in the District Court of the United States for the Northern District of California, at the City and County of San Francisco, before the Honorable M. T. Dooling, Judge. The Court ordered that libelant be allowed to amend Libel as to extent of damages sustained by the consignee of cargo. After several hearings this cause was submitted to the

Court for consideration and decision on the 22d day of November, 1913.

1914.

- January 22. Filed Opinion, Dismissing Libel (M. T. Dooling, Judge).  
 24. Filed Decree.  
 February 10. Filed testimony taken in open court.  
 17. Filed Notice of Appeal.  
 26. Filed Bond on Appeal in the sum of \$500.00, with the United States Fidelity & Guaranty Company, as surety.  
 May 16. Filed Assignment of Errors. [6]

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*In the District Court of the United States, in and for the Northern District of California.*

No. —.

PARROTT & COMPANY, a Corporation,  
 Libelant,  
 vs.

The British Bark "DOLBADARN CASTLE," Her  
 Tackle, Apparel and Furniture,  
 Respondent.

**Libel.**

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States, for the Northern District of California:

THE LIBEL of Parrott & Company, a corporation, against the British Bark "Dolbadarn Castle," her tackle, apparel and furniture, and against all

persons lawfully intervening for their interests therein, in a cause of contract, civil and maritime, alleges:

### I.

That at all the times hereinafter mentioned libellant was and now is a corporation organized and existing under the laws of the State of California, and doing business in the City and County of San Francisco, said State, as an importer and merchant.

### II.

That on or about the 19th day of February, 1910, at the Port of Rotterdam, in the Kingdom of Belgium, the Societe Anonyme de Niel-on-Rupell shipped, in good order and condition, certain merchandise, to wit, Two Thousand Seven Hundred and Seventy-five (2,775) barrels of cement, on the said bark, then and there employed as a general ship in the transportation of cargoes, to be transported [7] from said Port of Rotterdam to the Port of San Francisco, and there to be delivered, in like good order and condition, unto order, or to his or their assignees.

That on or about the 19th day of February, 1910, at the said Port of Rotterdam, John P. Best & Company shipped, in good order and condition, certain merchandise, to wit, 2,023 sheets, on the said bark, then and there employed as a general ship in the transportation of cargoes from said Port of Rotterdam by said bark to the Port of San Francisco, and there to be delivered, in like good order and condition, unto order, or to his or their assigns.

That when said consignments were received on

board as aforesaid, the master of said ship entered into written contracts of affreightment, wherein and whereby said master agreed to transport said merchandise and to deliver the same as aforesaid. Copies of said contracts or bills of lading are attached hereunto, marked Exhibit "A" and Exhibit "B" and made a part of this libel.

### III.

That thereafter said bark sailed from said Port of Rotterdam, bound for San Francisco, and arrived at San Francisco on or about the — day of —, 1910, with said consignments on board; but, notwithstanding the obligation of said contracts of affreightment, said consignments were not delivered to libelant or order in like good order or condition as when received, but, on the contrary, 50 barrels of cement were more or less damaged, and 185 tons of steel plates, carried under bill of lading Exhibit "B," were tendered to libelant or order in a damaged condition. That the damage caused to the said goods was caused while the same were on board and in the custody of said bark, by want of care of the master and owners of said bark in the stowage, transportation [8] and handling of said merchandise.

### IV.

That by reason of the premises, libelant was damaged as follows: That the damage on said steel plates amounts approximately to the sum of Eighteen Hundred and Fifty Dollars (\$1850.00), and the damage to the cement approximately to the sum of One Hundred and Twelve and 50/100 Dollars (\$112.50), be-



ing a total damage of Nineteen Hundred and Sixty-two and 50/100 Dollars (\$1962.50). That the master, owners and agents of said ship, although thereunto requested, have failed and refused to pay to libelant said damages or any part thereof.

V.

That said bark "Dolbadarn Castle" is now in the Northern District of California, and within the jurisdiction of this court, and that all and singular the premises are true and within the admiralty and maritime jurisdiction of this court.

WHEREFORE libelant prays that process in due form of law, according to the course of courts of admiralty and of this Honorable Court, in cases of admiralty and maritime jurisdiction, may issue against the said bark, her tackle, apparel and furniture, and that all persons claiming any right, title or interest therein may be cited to appear and answer, upon oath, all the matters aforesaid, and that this Honorable Court will be pleased to declare the payment of the damages aforesaid, with costs, and that the said vessel may be condemned and sold to pay said damages; and that libelant may have such other and further relief in the premises as in law and justice it may be entitled to receive.

ANDROS & HENGSTLER,  
Proctors for Libelant. [9]

Northern District of California,—ss.

R. H. Menzies, being duly sworn, deposes: I am an officer of the libelant corporation above mentioned, to wit, the secretary thereof, and as such authorized

to bring this action. I have read the foregoing libel and know the contents thereof, and the same are true, of my own knowledge, except as to those matters therein stated on information and belief, and as to those I believe the same to be true.

R. H. MENZIES.

Subscribed and sworn to this 12th day of September, 1910.

[Seal]

M. T. SCOTT,  
Deputy Clerk U. S. District Court, Northern District of California. [10]

**Exhibit "A" [to Libel—Bill of Lading].**

**CALIFORNIA TRADE BILL OF LADING.**

**JOHN P. BEST & CO.**

General Ship & Forwarding Agents,

**ANTWERP.**

Sailing Vessels.

Freight Payable at Port of Discharge.

..... cubic feet at .....	per 40 c. f.	£ .....
..... " " " .....	" 40 "	" .....
499,500 Kos at 18/- per ton of 1016 Ko	"	442.9.5
..... " " " .....	1000 "	" .....
	Minimum	" .....
		£ 442.9.5
	Primage	" .....
	Disbursements	" .....
	Primage	" .....
		£ 442:9:5



SAY:

Four hundred & forty two Pounds sterling.

nine Shillings.

five Pence Brt. Stg. PAY-

ABLE AT Destination. [11]

SHIPPED in good order and condition by the Societe Anonyme de Niel-on-Rupell on board the good Ship "Dolbadarn Castle," whereof is Master for this present voyage, Baxtre, lying in the port of ~~ANTWERP~~ ROTTERDAM and bound for San Francisco (Cal).

Label Josson

2775 (Two thousand seven hundred and seventy-five) Barrels Cement Kos. 499,500.

(TRADEMARK LABEL OF JOSSON & CO.)

In transit wholly or part.

being marked and numbered as in the margin, and to be delivered (subject to the exceptions and stipulations hereinafter mentioned) in the like good order and condition, at the aforesaid port of San Francisco unto Order or to his or their assigns. Average as per York-Antwerp Rules 1890. Freight for the said Goods and primage together, to be paid on delivery, as per endorsement, in cash, without deduction, at the exchange of \$4.85 per pound sterling.

Consignees to pay double freight on all weight found over and above the weight entered on this Bill of Lading, and also any extra expenses incurred in connection with weighing, should the weight be found on landing to be in excess of that entered in Bill of Lading.

The following are the exceptions and stipulations referred to: The act of God, the King's Enemies,

loss or damage from fire on board, in hulk or craft, or on shore, arrest and/or restraint of Princes, Rulers and People, Collision, any act, neglect, or default whatsoever of Pilot, Master or Crew in the management or Navigation of the Ship, and all and every danger and accidents [12] of the Seas, Canals, and Rivers, and of navigation of whatever nature or kind always mutually excepted. The vessel to have liberty to call at any ports in any order to sail without pilots and to tow and assist vessels in distress, and to deviate for the purpose of saving life or property.

The Ship is not liable for leakage, breakage, loss or damage by heat, sweat, rust, or decay, unless occasioned by improper stowage.

The Ship will not be liable for gold, silver, bullion, specie, jewellery, precious stones, or precious metals, unless Bills of Lading are signed for such goods, and the value declared therein.

If goods of a dangerous nature are shipped without being previously arranged for, they are liable to be thrown overboard, and their loss as well as any loss or damage to the Ship or cargo will fall upon the Shippers or Owners of such goods.

The Master is to deliver the Goods with all reasonable despatch; and the consignees are to be ready to receive them within forty-eight hours after the Ship commences to unload, otherwise the Master or Agent may discharge and store them at the expense and risk of the Owners of the Goods.

IN WITNESS WHEREOF, the Master, Owner, or Agent, of the said Ship, has signed three Bills of Lading, exclusive of the Master's copy, all of this

tenor and date, one of which being accomplished, the others to stand void.

Weight, measure and contents, unknown.

Dated in ~~Antwerp~~ 19th February, 1910.

Rotterdam

JOHN BAXTER,  
Master. [13]

SOCIETE ANONYME DE NIEL-ON-  
RUPELL.

ANCIENNE FABRIQUE DE CIMENT  
PORTLAND, JOSSON & CO.

L'Agent Comptable, L'Administrateur-Gerant,  
R. W. MAURY & CO. G. DEROOVER. [14]

**Exhibit "B" [to Libel—Bill of Lading].**

CALIFORNIA TRADE BILL OF LADING.

JOHN P. BEST & CO.

General Ship & Forwarding Agents,  
ANTWERP.

Sailing Vessels.

Freight Payable at Port of Discharge.

..... cubic feet at .....	per 40 c. f.	£ .....
..... " " " .....	" 40 "	" .....
305,210 Kos at 18/- per ton of 1016 Ko	"	279.4.5
..... " " " " 1000 "	"	" .....
	Minimum	" .....
		<hr/> £ 279.4.5
	Primage	" .....
	Disbursements	" .....
	Primage	" .....
		<hr/> £ 279.4.5

SAY:

Two hundred seventy-nine Pounds sterling.

four

Shillings.

five

Pence Brt. Stg. PAY-

ABLE AT Destination. [15]

SHIPPED in good order and condition by John P. Best & Co. (as agents) on board the good Ship Dolbadarn Castle, whereof is Master for this present voyage, Baxter, lying in the port of ~~ANTWERP~~ ROTTERDAM, and bound for San Francisco (Cal.)

D G H Co. 2023 (two thousand twenty three) Sheets.

Kos 315.210

“For transit wholly or part”

being marked and numbered as in the margin, and to be delivered (subject to the exceptions and stipulations hereinafter mentioned) in the like good order and condition, at the aforesaid port of San Francisco (Cal.) unto Order or his or their assigns. Average as per York-Antwerp Rules 1890. Freight for the said Goods and primage together, to be paid on delivery, as per endorsement, in cash, without deduction, at the exchange of \$4.85 per pound sterling.

Consignees to pay double freight on all weight found over and above the weight entered on this Bill of Lading, and also any extra expenses incurred in connection with weighing, should the weight be found on landing to be in excess of that entered in Bill of Lading.

The following are the exceptions and stipulations referred to: The act of God, the King's Enemies, loss or damage from fire on board, in hulk, or craft,

or one shore, arrest and/or restraint of Princes, Rulers and People, Collision, any act, neglect, or default *wathsoever* of Pilot, Master or Crew in the Management or Navigation of the Ship, and all and every danger and accidents of [16] the Seas, Canals, and Rivers, and of navigation of whatever nature or kind always mutually excepted. The vessel to have liberty to call at any ports in any order, to sail without pilots and to tow and assist vessels in distress, and to deviate for the purpose of saving life or property.

The Ship is not liable for leakage, breakage, loss or damage by heat, sweat, rust, or decay, unless occasioned by improper stowage.

The Ship will not be liable for gold, silver, bullion, specie, jewellery, precious stones, or precious metals, unless Bills of Lading are signed for such goods, and the value declared therein.

If goods of a dangerous nature are shipped without being previously arranged for, they are liable to be thrown overboard, and their loss as well as any loss or damage to the Ship or cargo will fall upon the Shippers or Owners of such goods.

The Master is to deliver the Goods with all reasonable despatch; and the consignees are to be ready to receive them within forty-eight hours after the Ship commences to unload, otherwise the Master or Agent may discharge and store them at the expense and risk of the Owners of the Goods.

IN WITNESS WHEREOF, the Master, Owner, or Agent of the said Ship, has signed three Bills of Lading, exclusive of the Master's copy, all of this



tenor and date, one of which being accomplished, the others to stand void.

Weight, measure and contents, unknown.

Dated, in ~~Antwerp~~ 19th February, 1910.

Rotterdam

J. B.

JOHN BAXTER,

Master. [17]

P. Pon JOHN P. BEST & CO.

N. W. MENDENTHAL.

[Endorsed]: Filed Sep. 12, 1910. Jas. P. Brown,  
Clerk. By M. T. Scott, Deputy Clerk. [18]

*In the District Court of the United States of  
America, Northern District of California.*

IN ADMIRALTY—No. 15,073.

PARROTT & COMPANY (a Corp.),

Libellant,

vs.

The British Bark "DOLBADARN CASTLE," etc.,  
Respondent.

### **Claim.**

To the Honorable JOHN J. DE HAVEN, Judge of  
the District Court of the United States, for the  
Northern District of California:

The claim of Dolbadarn Castle Ship Company,  
Limited, to the British Bark "Dolbadarn Castle,"  
her tackle, apparel and furniture, now in the cus-  
tody of the Marshal of the United States for the said  
Northern District of California, at the suit of Par-

rott & Company, a corporation, alleges:

That the said company, Dolbadarn Castle Ship Company, Limited, is the true and *bona fide* owner— of the said British Bark “Dolbadarn Castle,” her tackle, apparel and furniture, and that no other person is owner thereof.

Wherefore, this claimant prays that this Honorable Court will be pleased to decree a restitution of the same to said claimant and otherwise right and justice to administer in the premises.

JOHN BAXTER. [19]

JOHN BAXTER deposes and says that he was and is the master of said vessel, and that at the time of the said arrest thereof he was in possession of the same as the lawful bailee thereof for the said owner,— and that the said owner— resides out of the said Northern District of California, and more than one hundred miles from the city of San Francisco, in said District.

Northern District of California,—ss.

Subscribed and sworn to before me this 14th day of September, A. D. 1910.

[Seal]

FRANCIS KRULL,

Deputy Clerk U. S. District Court, Northern District of California.

IRA S. LILLICK,

Proctor for Claimant.

[Endorsed]: Filed Sep. 14, 1910. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk. [20]

## UNITED STATES OF AMERICA.

*In the District Court of the United States for the  
Northern District of California.*

## IN ADMIRALTY.

PARROTT & COMPANY, a Corporation,  
Libelant,  
vs.

The British Bark "DOLBADARN CASTLE," Her  
Tackle, Apparel and Furniture,  
Respondent.

THE DOLBADARN CASTLE SHIPPING COM-  
PANY, LIMITED, a Corporation,  
Claimant.

**Answer and Interrogatories.**

To the Honorable JOHN J. DE HAVEN, Judge of  
the District Court of the United States for the  
Northern District of California:

The answer of the Dolbadarn Castle Shipping  
Company, Limited, a corporation, owner and claim-  
ant of the British Bark "Dolbadarn Castle," her  
tackle, apparel and furniture, to the libel of Par-  
rott & Company, a corporation, respectfully shows  
as follows:

## I.

Answering unto the first article in said libel the  
claimant admits the same. [21]

## II.

Answering unto the second article in said libel,  
the claimant admits the same, save as hereinafter  
specifically denied and with the exception that, under



the contracts of affreightment or bills of lading mentioned in Article II of said libel, the goods therein referred to were, under the terms of the said contracts of affreightment or bills of lading, to be delivered in like good order and condition at the Port of San Francisco, as when received, the act of God, the neglect and default of pilot, master or crew in the navigation of the ship and all and every the dangers and accidents of the seas, rivers and navigation of whatever nature or kind excepted.

And under the said contracts of affreightment or bills of lading it was agreed that the ship would not be liable for leakage, breakage, loss or damage by heat, sweat, rust or decay unless occasioned by improper storage.

Further answering said article of said libel the claimant alleges that it is informed and believes, and upon such information and belief alleges, that the 2,023 steel plates referred to in said article of said libel were received by claimant on board said vessel on or about the 19th day of February, 1910, at the Port of Rotterdam, but that when so received the said plates, or a portion thereof, were in a more or less rusty condition.

### III.

Answering unto the third article in said libel, the claimant admits that when the barrels of cement therein referred to were delivered at the Port of San Francisco, they were not in the same good order and condition in which they had been received, and that the damage caused to the said barrels of cement, as well [22] as to a part or portion of said steel

plates, was caused to the same while the said cement and the said steel plates were on board and in the custody of said bark; but claimant denies that the same or any part thereof were damaged by reason of the want of care of the master or owners of said bark, either in the stowage or transportation or handling of said merchandise.

#### IV.

The claimant avers that the loss and damage referred to in said libel were caused solely and entirely by the force of the winds and waves and perils of the sea; which, notwithstanding that the said bark had been and was up to that time in all respects seaworthy and properly stowed, so injured and strained her that the sea water during a long season of tempests and gales was forced through her decks into and upon the cargo referred to, wetting and damaging the same; that the master and crew of said vessel took every precaution for the protection of said cargo, and that the damage thereto was caused by the act of God and without fault on their part or insufficiency on the part of said vessel.

#### V.

Answering unto the fourth article in said libel, the claimant admits that the master, owners and agents of said bark have been requested to pay to libelant certain damages which libelant claims to have sustained by reason of said damage to said merchandise, and that claimant has failed and refused to pay libelant therefor; as to the allegation in said article that the damage on said steel plates amounts approximately to the sum of One Thousand Eight

Hundred Fifty Dollars (\$1850.00) and the damage to the cement approximately to the sum of One Hundred Twelve and 80/100 Dollars (\$112.80), the claimant has no information with regard [23] to the amount of said damage, wherefore claimant calls for proof thereof.

VI.

Answering unto the fifth article in said libel, the claimant admits the jurisdiction of this court, but denies that all and singular the premises of said libel are true except as the same are hereinbefore specially admitted.

WHEREFORE, the claimant prays that the said libel be dismissed and for its costs.

THE DOLBADARN CASTLE SHIPPING  
COMPANY, LIMITED.

By IRA S. LILLICK.

IRA S. LILLICK,

Proctor for Claimant. [24]

United States of America,  
Northern District of California,—ss.

Ira S. Lillick, being first duly sworn, deposes and says: That the claimant in the above-entitled cause is absent from this District and resides more than One Thousand (1,000) miles therefrom, and that deponent is authorized to act for it herein, and he is the agent for claimant for the purpose of defending any cause of action stated in the libel on file herein; that the foregoing answer is true according to his information and belief, that the source of deponent's knowledge is information derived from the agents of the claimant and documents which he has seen;

and that deponent verily believes said information is true.

IRA S: LILLICK.

Subscribed and sworn to before me this 3d day of November, 1910.

[Seal]

CEDA DE ZALDO,

Notary Public in and for the City and County of San Francisco, California. [25]

**[Interrogatories Propounded to Libelant.]**

Interrogatories propounded to the libelant, which it is required to answer in writing, under oath.

First Interrogatory:

When the steel plates, referred to in the libel herein, were delivered to the "Dolbadarn Castle" for shipment at Rotterdam, were they not in a more or less rusted condition?

Second Interrogatory:

Did the mate of the "Dobadarn Castle" deliver to the consignor of said steel plates a receipt for said steel plates in addition to Bills of Lading?

Third Interrogatory:

If your answer to the Second Interrogatory be in the affirmative, attach to your answers to the foregoing interrogatories a copy of said receipt.

San Francisco, November 3d, 1910.

IRA S. LILLICK,

Proctor for Claimant.

Due service and receipt of a copy of the within answer and Interrogatories is hereby admitted this 3d day of November, 1910.

ANDROS & HENGSTLER,

Proctors for Libelant.

[Endorsed]: Filed Nov. 4, 1910. Jas. P. Brown,  
Clerk. By M. T. Scott, Deputy Clerk. [26]

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*In the District Court of the United States, in and  
for the Northern District of California.*

No. 15,073.

PARROTT & COMPANY, a Corporation,  
Libelant,

vs.

The British Bark "DOLBADARN CASTLE," Her  
Tackle, Apparel and Furniture,  
Respondent.

**Exceptions to Answers and Interrogatories.**

To the Honorable JOHN J. DE HAVEN, Judge of  
the Above-entitled Court:

FIRST: The Exceptions of Parrott & Co., libel-  
ant, to the Answer of the claimant herein allege:

That the following part of said Answer is irrele-  
vant and impertinent, to wit: All that part thereof  
beginning on page 2, line 16, with the words: "Fur-  
ther answering," and continuing to the end of Arti-  
cle II of said Answer. The allegations contained in  
the part specified constitute no defence to the libel,  
being an attempt to vary and contradict the written  
Bills of Lading set forth in the Libel and admitted  
by the Answer to be the contract between the par-  
ties hereto.

SECOND: The Exceptions of Libelant to the  
Interrogatories propounded to the libelant allege  
that said Interrogatories are irrelevant and imperti-



nent, and, on the face thereof, purport to elicit facts which would be incompetent, irrelevant and immaterial under the issues and pleadings, and which facts, assuming them to be true, would vary and contradict the express terms of the written contract between the parties hereto.

WHEREFORE libelant prays that the part of the Answer above specified, together with the said Interrogatories, be struck from said Answer.

ANDROS & HENGSTLER,

Proctors for Libelant. [27]

Due service and receipt of a copy of the within Exceptions to Answer is hereby admitted this 12th day of December, 1910.

IRA S. LILLICK,

Proctor for Respondent.

[Endorsed]: Filed Dec. 13, 1910. Jas. P. Brown, Clerk. By M. T. Scott, Deputy Clerk. [28]

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At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 5th day of June, in the year of our Lord one thousand nine hundred and eleven. Present: The Honorable JOHN J. DE HAVEN, Judge.

#15,073.

PARROTT & CO.

vs.

Br. Ship "DOLBADARN," etc.

**Order Submitting Cause as to Exceptions to Answer.**

The exceptions to the Answer herein this day came on for hearing, L. T. Hengstler, Esqr., appearing for respondent and Ira S. Lillick, Esqr., appearing for libelant, and after hearing proctors, by the Court ordered that said exceptions be, and they are hereby, submitted to the Court for decision upon the points and authorities cited. [29]

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At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 8th day of June, in the year of our Lord one thousand nine hundred and eleven. Present: The Honorable JOHN J. DE HAVEN, Judge.

#15,073.

PARROTT & CO.

vs.

The Br. Brk. "DOLBADARN," etc.

**Order Overruling Exceptions to Answer, etc.**

The exceptions to the answer and interrogatories propounded by respondent, having been heretofore submitted to the Court for decision, now after due consideration had thereon, by the Court ordered that said exceptions be, and the same are hereby overruled. [30]

*In the District Court of the United States, for the  
Northern District of California.*

PARROTT & CO., a Corporation,

Libelant,

vs.

The British Bark "DOLBADARN CASTLE," Her  
Tackle, Apparel and Furniture,

Respondent.

**Exceptions to the Answers of Libelant to the Inter-  
rogatories Proposed to It.**

First: The claimant excepts to the answers to the first interrogatory for the reason that instead of answering the interrogatory fully, directly and positively, it purports to answer it by stating that it has no knowledge or information concerning it, and said answer is insufficient.

Second: That claimant excepts to the answer to the second interrogatory for the reason that the said answer is insufficient in that it simply states that the libelant has no knowledge respecting the subject matter of said interrogatory.

WHEREFORE, claimant prays that the libel be dismissed and that claimant have judgment herein for its costs or for such other relief herein as to this Honorable Court shall seem meet and proper.

Dated: December 29th, 1911.

IRA S. LILLICK,  
Proctor for Claimant.

Due service and receipt of a copy of the within



exceptions, etc., is hereby admitted this 29th day of December, 1911.

ANDROS & HENGSTLER,  
Attorney for Libelant.

[Endorsed]: Filed Dec. 30, 1911, at 11 o'clock and  
— min. A. M. Jas. P. Brown, Clerk. By Francis  
Krull, Deputy Clerk. [31]

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At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 27th day of January, in the year of our Lord one thousand nine hundred and twelve. Present: The Honorable R. S. BEAN, Judge.

#15,073.

PARROTT & CO.

vs.

Bk. "DOLBADARN CASTLE," etc.

**Order Submitting Cause as to Exceptions to  
Answers to Interrogatories.**

The exceptions to the answers to the Interrogatories this day came on for hearing. Ira S. Lillick, Esqr., appearing for and Mr. Bell opposing said exceptions. After hearing proctors by the Court ordered that said exceptions stand submitted to the Court for determination. [32]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 3d day of February, in the year of our Lord one thousand nine hundred and twelve. Present: The Honorable R. S. BEAN, Judge.

#15,073.

PARROTT & CO.

vs.

The Brk. "DOLBADARN," etc.

**Order Overruling Exceptions to Answers to Interrogatories.**

The exceptions to the answers to the interrogatories proposed by claimant herein, having been heretofore submitted to the Court for determination, now after due consideration had thereon, by the Court ordered that said exceptions be, and the same are hereby overruled. [33]

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**[Minutes—Hearing—November 18, 1913.]**

At a stated term of the District Court of the United States for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 18th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

#15,073.

PARROTT &amp; CO.

VS.

The Br. Bark "DOLBADARN CASTLE," etc.

This cause this day came on for hearing, L. T. Hengstler, Esqr., appearing for libelant and Ira S. Lillick, Esqr., appearing for claimant. On motion of L. T. Hengstler, libelant allowed to amend libel as to extent of damage and consignee of cargo. Mr. Hengstler then stated the case and Mr. Lillick called W. H. Stewart, John A. Bishop, Thoas. Wallace, Raphael Lopez, and F. W. Mills, who were each duly sworn and examined for claimant. Mr. Hengstler called Alfred F. Pillsbury, Franklin Riffe, Bernard Hilbing, who were each sworn and examined for libelant. Claimant introduced in evidence a certain exhibit, which was marked Claimant's Exhibit #1. The further hearing was then continued until tomorrow at 9 o'clock A. M. [34]

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**[Minutes—Hearing (Resumed) November 19, 1913.]**

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 19th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

#15,073.

PARROTT &amp; CO.

vs.

The Br. Bark "DOLBADARN," etc.

The further hearing of this cause was this day resumed. Mr. Hengstler called Frederick G. Wilson, G. Loken, who were each duly sworn and examined on behalf of claimant. Mr. Lillick called H. L. E. Meyer, Jr., who was duly sworn and examined for claimant. Further hearing continued until to-morrow at 9 o'clock, A. M. [35]

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**[Minutes—Hearing (Resumed) November 20,  
1913.]**

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 20th day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

#15,073.

PARROTT &amp; CO.

vs.

The Brk. "DOLBADARN CASTLE," etc.

The further hearing of this cause was this day resumed. Mr. Hengstler called P. W. Tomkins and H. L. Winckle, who were each duly sworn and exam-

ined for libelant. Mr. Lillick introduced in evidence depositions taken on behalf of claimant before a United States Commissioner. Further hearing continued until Nov. 22, 1913, at 9 o'clock, A. M. [36]

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**[Minutes—Hearing (Resumed) and Submission—  
November 22, 1913.]**

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 22d day of November, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable M. T. DOOLING, Judge.

#15,073.

PARROTT & CO.

vs.

The Brk. "DOLBADARN CASTLE," etc.

The further hearing of this cause was this day resumed. The cause was argued by respective counsel and submitted to the Court for decision upon points to be filed. [37]

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**[Order Dismissing Libel.]**

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 22d day of January, in

the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable M. T. DOOLING, Judge.

#15,073.

PARROTT & CO.

vs.

The Brk. "DOLBADARN CASTLE," etc.

This cause having been heretofore submitted to the Court for decision, now after due consideration had the Court files its written opinion, and by the Court ordered that the libel herein be, and the same is hereby dismissed. [38]

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*In the District Court of the United States, in and for the Northern District of California, First Division.*

MAURICE T. DOOLING, Judge.

PARROTT & COMPANY,

Libelant,

vs.

The British Ship "DOLBADARN CASTLE," Her  
Tackle, Apparel and Furniture,  
Respondent.



**Testimony Taken in Open Court.**

TUESDAY, NOVEMBER 18, 1913.

APPEARANCES:

L. T. HENGSTLER, Esq., for Libelant.

IRA S. LILLICK, Esq., for Respondent.

**[Statement of Case by Mr. Hengstler.]**

Mr. HENGSTLER.—If it please the Court, this is a case of damage to cargo carried to this port from Rotterdam in December, 1910, in the British ship “Dolbadarn Castle.” At the time when the libel was filed, the damages as then ascertained were stated to be a certain number of barrels of cement, 50 barrels of cement; afterwards, and in the course of time it was ascertained that a considerable number of other barrels were found damaged; the damage was not ascertained until the cement was sold to buyers, and for that reason I desire to move an amendment to the libel amending the word “fifty” in the libel to the word “four hundred” barrels of cement. I understand that your Honor will follow the usual practice of *referred* the damages to the Commissioner. We will show that the cargo whilst damaged here, and that the claimant is liable in the number of barrels to be shown as damaged, I understand, is a matter for the Commissioner to ascertain on reference [39] for the ascertainment of the damages.

The COURT.—Yes.

Mr. HENGSTLER.—The motion to amend is granted?

Mr. LILLICK.—I want to put in an objection, your Honor, that we are not here on the pleadings on the remaining barrels and it is borne out by the number of barrels alleged to have been damaged in the libel, that the tops of 50 barrels of cement were damaged, and our explanation is, as we will present evidence to your Honor, that was caused by the ship having gone through a storm and water leaked in; the only objection is this, it is taking me by surprise, and my proof is as to that.

Mr. HENGSTLER.—You do not claim that the tops of 50 barrels or 150 barrels were damaged?

Mr. LILLICK.—That is true. I am only putting in my objection to explain the situation I am in in reference to the changed libel.

The COURT.—It is not claimed that the other cement that you have found damaged since the filing of the libel was damaged by any other cause or for any other reason than the other?

Mr. HENGSTLER.—No; we claim the damage was exactly the same damage.

The COURT.—So far as the cause of injury is concerned, the testimony concerning 50 or 400 would be the same.

Mr. HENGSTLER.—Exactly the same. We will show the cause of the damage was one cause that effected all the damage.

The COURT.—The amendment will be permitted.

Mr. HENGSTLER.—Now, if your Honor please, I do not think it is necessary to present the case to the Court to read the libel.

The COURT.—I read the libel this morning, and

I did not quite see what connected the libelant with the transaction. There may be some allegation or some averment in there. It is averred that— [40]

Mr. HENGSTLER.—(Intg.) That the libelant is the consignee.

The COURT.—Is that averred anywhere?

Mr. HENGSTLER.—It is intended to be averred. I thought it was. I will read it.

The COURT.—I do not notice any such averment. It may be there.

Mr. HENGSTLER.—It seems that there is no express averment; in article 3 of the libel your Honor will notice that there is stated that the cargo was tendered to the libelant or order in a damaged condition.

The COURT.—That is true.

Mr. HENGSTLER.—As a matter of fact, it should appear more clearly that the libelant in this case is the consignee of the cargo. If your Honor will allow me an amendment to that effect—

The COURT.—I thought the matter has proceeded thus far apparently on the theory that it was fully stated. I think perhaps you had better amend and make it clear.

Mr. HENGSTLER.—I thought that was understood.

Mr. LILLICK.—We have no objection. That is a fact.

Mr. HENGSTLER.—It is perhaps true that in our admiralty pleadings we have been a little negligent in the past, because it has always been the practice not to take any technical objection with refer-

ence to matters of that sort; and it may be that this is one of the libels that has been handed down from generation to generation here in this port. I suspect it is.

Now, the cargo in this case that was damaged consisted of two elements; one of the shipments of cargo was cement in barrels. The libel alleges that there were 2,775 barrels of cement. The other shipment is a shipment of steel plates or sheets, as they [41] are called in the bill of lading, 2,023 sheets. That, if your Honor please, is admitted. Bills of lading are attached to the libel as exhibits and they show that the cargo was shipped in good order and condition, both the cement cargo and the plates in question, in good order and condition. Then the libel states that a breach of contract that the cargo arrived in this port in bad condition, damaged. The answer admits the damage in article 3, which states that, answering unto the third article in said libel, the claimant admits that when the barrels of cement therein referred to were delivered at the Port of San Francisco they were not in the same good order and condition in which they had been received, and that the damage caused to the said barrels of cement, as well as to a part or portion of said steel plates, was caused to the same while the said cement and said steel plates were on board and in the custody of said bark. These damages, therefore, are admitted. Now, the libel alleges that a certain number of these barrels of cement were damaged and that 185 tons out of the 2,023 sheets also were damaged; a part, therefore, of the sheets of the steel plates was damaged. It is libelant's contention that this damage was caused by

negligence in the stowage and transportation and handling of these goods, as the libel shows. More specifically we intend to show to your Honor that the damage was caused by coke sweat in connection with insufficient ventilation in the ship. We will show to your Honor that the vessel was filled up very largely with a cargo of coke; that in the forward part and after part of the vessel there was stowed coke in bulk, and that only the middle portion of the vessel contained what is called general merchandise, including this cement and the steel plates. The general merchandise was bulkheaded off on both sides from the coke. We intend to show to your Honor that the damage was caused [42] by the sweat of the coke. It is a notorious fact that coke is dangerous merchandise to ship in a vessel, and that the proper stowage of that kind of cargo makes it necessary to use extra precautions, to bulkhead it off from general merchandise, which is likely to be damaged by the coke sweat, by an air-tight, by a sweat-tight bulkhead. That was not done in this case, and the damage, we claim, arose by reason of the sweat of the coke that permeated the entire vessel, and that produced the damage in the cement by caking it, and the damage on the steel plates by pitting them, making not merely superficial rust upon these steel plates, but little holes; it ate little holes into them, so as to make these steel plates useless for the commercial purposes for which they are used. We will show to your Honor that these steel plates are particularly sensitive and require particularly careful stowage.

Now, the contention on the other side is—



Mr. LILLICK.—Do you mind my stating it?

Mr. HENGSTLER.—I am merely stating it from the pleadings, as far as the answer is concerned; I am not going into details. The answer pleads that this damage was caused by the force of winds and waves and perils of the sea, by sea water entering and damaging the cargo and forced through the decks, and without any fault on the part of the master and the crew. That, I think, is the case.

Now, a very similar case was tried in this court a year or so ago, and I think it would be proper as part of the statement of the facts in this case to refer your Honor to it at the present time, because I think it raised exactly the same questions with reference to the precautions necessary to the stowage of this kind of merchandise. If there is no objection I would like to call your Honor's attention to it at this stage; I do not [43] want it to appear as argument, because it happens to be recorded in a law book. It is a statement of the facts in the "Jean Bart" case, and I think it will help your Honor in seeing the issues that are involved in the transaction. I will call your Honor's attention to it at this time. The case I refer to is the case of "Jean Bart"—

Mr. LILLICK.—If that be done, I want, of course, to have before the Court all the facts in this case; but if it be in the nature of an argument, of course that can be properly taken up at that time. I do not want to hurry this case along unnecessarily by anything of that sort; it would simply mean a repetition, I think, later of your statement of what the facts are in the "Jean Bart" case, in the way of argument



touching on that question.

Mr. HENGSTLER.—I do not intend to make any argument at the present time. I know that will not be proper. I simply offer the statement of facts as exactly analogous in showing the nature of this kind of cargo in connection with coke, and instead of showing it in my own words and elaborating on it in my own words, I can give it simply using the words of Judge Dietrich in that case. However, I can leave it to your Honor to read it. I refer to it particularly, that part of the case on page 1,003, beginning with the paragraph marked “1,” down to page 1,004, the 3d paragraph.

The COURT.—What is the volume?

Mr. HENGSTLER.—The volume is 197 of the Federal Reporter. It is a case that was tried in this court and decided by Judge Dietrich, nearly two years ago.

Now, if your Honor please, in view of the admissions in the answer in article 3 that the damage happened in the vessel, we have made out a *prima facie* case under the law, because the principle of law is well settled that when goods are damaged [44] while in the possession of a ship there is a *prima facie* presumption that the injury was caused by the fault of the ship rather than by perils of the sea. I would refer your Honor with reference to that principle to the 36 Volume of CYC., on page 267. On that page, in Note 50, your Honor will find a great many authorities, long series of authorities cited to that principle, about which there can be no doubt. It appears that the goods were damaged in this ship and

it is admitted that they were damaged in the ship, and while they were in the possession of the ship. That raises a *prima facie* presumption in our favor, and the burden of proof is now upon the ship to prove by a preponderance of evidence that the injury was caused by perils of the sea.

Mr. LILLICK.—If your Honor please, our defense in the action will be based, first, and primarily, upon the fact that there was a charter-party entered into between the owner of the ship and Parrott & Company, the libelant in this case, and that the damage that was done to this cargo was a damage that arose wholly and alone by reason of a peril of the sea, a storm or two storms through which this vessel passed, of such severity, that the deck seams opened at the mast and allowed salt water to leak down upon this cargo, and under all of the authorities upon that point, the burden of proof of this *prima facie* case, which Mr. Hengstler has just spoken of, and Mr. Hengstler will agree with me about that, after we prove to your Honor's satisfaction that this damage was caused by salt water or by water that subsequently, by reason of the evaporation of this salt water, caused the pitting of this steel and the damage to this cement, then and thereupon the burden of proof shifts back upon the libelant to prove that that damage was not by the storm. That is correct, is it not, Mr. Hengstler? [45]

Mr. HENGSTLER.—Proceed with that proof first.

Mr. LILLICK.—I think you and I are practically agreed upon the law in the case. Secondly, if your

Honor please, the charter-party was supplemented by bills of lading in which bills of lading were provisions exempting the vessel from liability of rust, sweat, and certain other exemptions unless due to improper stowage. The charter-party itself between the owners of the vessel, and Parrott & Company, had a provision in it under which the stevedore was to be appointed by the charterers, which will mean a point upon our side that this vessel was stowed under the direction and supervision of an agent of Parrott & Company itself. Another provision of the charter-party was that the owners were to furnish a certificate from a competent surveyor as to the seaworthiness of the vessel and her ability to carry cargo.

Mr. HENGSTLER.—On that point, you do not deny that the ship and captain are solely responsible for stowage, do you?

Mr. LILLICK.—Not entirely, Mr. Hengstler, but with this qualification, where the stevedore who has loaded the vessel is a stevedore appointed by the charter, it makes a difference as to whether or not the charter-party provides for this stevedore as an agent of the charterer rather than to have the master upon his own responsibility and using his own judgment stow the cargo; in other words, that the burden of proof put upon us is not so great where the stevedore appointed by the charterer is present acting for the consignee of the cargo.

Mr. HENGSTLER.—You admit that the testimony of your captain is very express on the point

that he and he alone was responsible for the stowage of the vessel.

Mr. LILLICK.—I don't recall that, Mr. Hengstler, exactly, but it is the testimony of the captain that the vessel was stowed [46] properly, and then carrying out his testimony, the other members of the crew, the officers of the vessel—

The COURT.—(Intg.) If the vessel was stowed properly it would not make much difference who stowed it, would it?

Mr. LILLICK.—No, it would not, and we propose to show it was properly stowed. I think that is all. As I understand, Mr. Hengstler, you propose that I put in my case before yours. The order of proof will make no difference because in the long run the court, of course, will have to make up its mind whether we have shown that these damages were caused by a peril of the sea or whether they were a result of what you claim, sweat.

Mr. HENGSTLER.—I think it does make a difference. Our position under the pleadings is we rest with our *prima facie* case.

Mr. LILLICK.—That makes no difference, so I will proceed to read the depositions of the officers of the vessel. I am sorry to take up your Honor's time in reading the depositions, but it is absolutely necessary in order to argue the case as Mr. Hengstler and I both desire to do orally, we have to read this testimony because it is so interlocked with other testimony in the case that it would be necessary to hear it. The first witness is John Baxter, if your Honor please, on page 3.

Mr. HENGSTLER.—If your Honor please, there are witnesses here who are business men. The reading of this testimony will probably consume two hours. Would it be proper that the witnesses be excused until to-morrow morning, because then we will be through with this part of it?

The COURT.—Why bring the witnesses back to-morrow morning when you have them here to-day? These things are always here.

Mr. HENGSTLER.—I have no objection. If you will call your witnesses then I will call my witnesses.  
[47]

Mr. LILLICK.—I think unquestionably you will agree with me that the log of the vessel shows that she went through severe storms. After showing that I could rest so far as my side of the case was concerned, and the burden would be upon you to prove that the stowage was improper. Now, the witnesses that I have here are witnesses to rebut whatever testimony you might put in with respect to that improper stowage.

Mr. HENGSTLER.—I do not think that that is correct, that if you succeeded in showing there were storms, that would shift the burden of proof.

Mr. LILLICK.—You and I disagree.

Mr. HENGSTLER.—I could not agree on that.

The COURT.—It seems to me, gentlemen, that you might state generally what your depositions show, without reading them at this time, and the Court can read the depositions afterwards.

Mr. LILLICK.—Then I will put my witnesses on the stand at this point, without any question as to



where the burden of proof is, and I will read the depositions to your Honor later before we argue the case.

The COURT.—You can assume that the depositions being of some force, instead of being read from the rostrum, the Court can read the depositions, and the Court will read them before the argument. There are certain hours that we can put in in court. Now, to-morrow I have a case on with a jury coming in, and I do not think we ought to take two hours of our court time in reading depositions.

Mr. LILLICK.—Then the case will be continued until after your Honor has read the depositions for argument?

The COURT.—Yes; if you desire to argue it orally some future day will be fixed and the Court will meanwhile read the depositions.

Mr. LILLICK.—I will waive any point as to the proposition of [48] burden of proof being on me, and will call my witnesses.

**[Testimony of W. H. Stewart, for Respondent.]**

W. H. STEWART, called for respondent, sworn.

Mr. LILLICK.—Q. What is your occupation, Mr. Stewart?     A. Surveyor for Lloyd's Register.

Q. How long have you been surveyor for Lloyd's Register?     A. About 12 years.

Q. What is your duty with reference to examining cargoes as an agent of Lloyd's Register?

A. I examine simply when I am called in in special cases to do so.

Q. Were you called in upon an occasion about three years ago, 1910, to examine certain steel plates



(Testimony of W. H. Stewart.)

that were a part of the cargo of the "Dolbardan Castle"? A. I was.

Q. What did your examination of those steel plates result in with respect to your opinion as to the cause of the damage?

A. My examination of the steel plates convinced me that the pitting and deterioration was in a large measure due to salt water.

Mr. LILLICK.—Take the witness.

Cross-examination.

Mr. HENGSTLER.—Q. What examination did you make, Captain Stewart?

A. I made the usual examination, test, such as is made in those cases.

Q. What is that examination?

A. Well, the examination of the damages material and testing with nitrate of silver in the usual way.

Q. With nitrate of silver? A. Yes.

Q. What reaction did you get?

A. It gave the reaction that is usually given by salt.

Q. What is that reaction?

A. A sort of milky reaction. [49]

Q. How long have you been surveying cargoes, Captain? A. Off and on for about 12 years.

Q. In what part of the world?

A. San Francisco.

Q. How long have you been Lloyd's Surveyor?

A. 12 years.

Q. Have you ever examined damaged steel plates before? A. Yes.

(Testimony of W. H. Stewart.)

Q. Do you know the nature of steel plates?

A. Yes.

Q. Are they susceptible to outside influences or not, in your experience?

A. They are susceptible to water moisture and other chemicals of course.

Q. Subject to moisture; any kind of moisture, or particular kinds of moisture?

A. Well, some forms of moisture affect them of course more readily than others.

Q. Are they more sensitive than other kinds of steel or less sensitive than other kinds of steel? Take, for instance, steel bars; are they sensitive to outside influences? A. I don't think so.

Q. You don't know, do you?

A. It depends a good deal on the composition of the steel, the nature of the steel itself.

Q. What kind of steel was this that you examined?

A. Ordinary steel plates, metal plates.

Q. Ordinary steel plates. Did you know what the purpose of these steel plates was?

A. Just for ordinary purposes, I believe, for tanks, etc.

Q. Are all steel plates alike or was this a particular kind of steel plate?

A. Well, so far as I know, they were ordinary steel plates.

Q. But you don't know, do you?

A. I don't know definitely the composition of the plates; no.

Q. How thick were these plates, Captain?

(Testimony of W. H. Stewart.)

A. The thickness varied, so far as I remember.

[50]

Q. To what extent?

A. I could not tell you the extremes. As far as I remember, they ran from about  $\frac{1}{4}$  of an inch to perhaps  $\frac{3}{8}$ , and possibly thinner than that; I don't remember exactly.

Q. They were very thin steel plates, were they, so far as you remember? A. Not very thin; no.

Q. But from  $\frac{1}{4}$  of an inch to  $\frac{3}{8}$  of an inch is your recollection? A. As far as I remember, yes.

Q. You are not an expert on steel, are you, Captain? A. Well, no, not exactly.

Q. You are not an expert on this kind of steel plates, are you?

A. In what way, an expert in what way?

Q. What experience have you had with that kind of steel plates?

A. Well, I have had considerable experience in having steel plates built into various kinds of structures, steel vessels, and the different parts of vessels.

Q. You know when it is a steel plate and you know when it is something else; that is about all, isn't it, Captain? A. Not exactly, no.

Q. You don't know how sensitive a steel plate is to the influence of a particular chemical or of the atmosphere, do you? A. No, not particularly.

Q. Do you know what agencies produce pitting in steel plates, Captain?

(Testimony of W. H. Stewart.)

A. A great many agencies produce pitting in steel plates.

Q. A great many agencies?      A. Yes.

Q. Now, if you had used this test, this salt-water test that you mentioned of nitrate of silver on anything that comes out of the ship you would have got some reaction, would you not?

A. Not necessarily.

Q. Isn't it a fact, Captain, that everything that comes out of the hold of a ship shows that same reaction?      A. No. [51]

Q. Does it not necessarily contain some salt?

A. I never found it so.

Q. Isn't it a fact that there is a great deal of salt in the very air, Captain, everywhere, here in San Francisco and everywhere, so that if you used that nitrate of silver on most anything you would get some reaction of the kind that you have described; isn't that a fact?

A. I have used it very frequently without having any reaction. This is the ordinary application of it.

Q. Did you ever use it when you got the reaction, when you came to the conclusion that the cause of the reaction was something outside of salt water?

A. No, I do not believe I have.

Q. But you are not a chemist, are you, Captain?

A. No, I am not.

Q. You don't know anything about it, this is just a popular test?      A. It is a usual, every-day test.

Q. You don't think, Captain, that there is enough salt in a vessel, a vessel that has been floating on

(Testimony of W. H. Stewart.)

the ocean for 5 or 6 months, and has been coming from Rotterdam to San Francisco, enough salt on everything that comes out of the hold of that vessel to show some reaction?     A. No, I don't.

Q. You don't think so?

A. No, not as applied to it, visible to the naked eye. It may be that on a minute chemical examination there might be traces of salt on it.

Redirect Examination.

Mr. LILLICK.—Q. What did this examination of yours show with reference to salt, as to a slight reaction or a decided reaction?

A. Well, it showed sufficiently plain to convince me that there was salt contained on the material.

[52]

Q. By speaking of the test as a popular test, what was that test with reference to the usual and customary test made by marine surveyors to determine the reason for the rust or pitting?

A. Simply applying a few drops of nitrate of silver to the parts which we tested.

Q. Is that the usual and customary test applied by marine surveyors?     A. Yes.

Q. One of the agencies of pitting is salt, is it not, Mr. Stewart?

A. That frequently causes pitting, yes.

Q. Was there any question in your mind as to the cause of the pitting on this steel at the time you made your test?     A. No.

Recross-examination.

Mr. HENGSTLER.—Q. Where did you make this



(Testimony of W. H. Stewart.)

test, where were those steel plates?

A. In the warehouse of Dunham, Carrigan & Hayden.

Q. How far away is that from the place the "Dolbardan Castle" discharged, from the pier?

A. The warehouse is at 6th or 7th or 8th Street, probably 2 miles away.

Q. When did you make that investigation?

A. On the 30th of September, 1910.

Q. Do you know when this cargo arrived here in port? A. No, I do not.

Q. You don't know whether it arrived in August or July, do you?

A. Well, I don't know of my personal knowledge anything about that.

Q. You know that there are other agencies that produce pitting this salt water, don't you, Captain?

A. Yes.

Mr. HENGSTLER.—That is all.

Mr. LILLICK.—That is all. [53]

**[Testimony of John A. Bishop, for Respondent.]**

JOHN A. BISHOP, called for the respondent, sworn.

Mr. LILLICK.—Q. Mr. Bishop, what is your occupation? A. Average adjuster.

Q. How long have you been an average adjuster?

A. Since 1902 in San Francisco.

Q. And elsewhere? A. Liverpool, England.

Q. What, if any, experience have you had with reference to examining cargoes of vessels?

A. Since 1902 in San Francisco I have frequently



(Testimony of John A. Bishop.)

examined cargoes.

Q. In these examinations have you had occasion to look at steel plates or other general cargo arriving in vessels to determine whether or not it was damaged by salt?     A. On frequent occasions.

Q. What would you say as to the reaction from a salt test with reference to any cargo coming on a vessel?

A. It depends somewhat on the nature of the goods; on the nature of the article; on some articles there is a very marked reaction for salt; on the iron hoops of barrels, for instance, or iron, you will frequently find a very marked reaction.

Q. And where that marked reaction comes what is the usual reason for it?

A. I don't quite understand the question.

Q. Where that marked reaction of salt occurs on barrels, or hoops of barrels in the cargo of vessels, what is the reason for the salt deposits on the barrels or on the hoops?

A. Well, I would say that salt water has lodged on the hoops or on the article and the water having evaporated has left the salt.

Q. Now, Mr. Bishop, with reference to the general type of the vessel and the point testified to a few minutes ago about some cargo not having any traces of reaction of salt, what do you say of that? [54]

A. That is very frequently the case. We frequently examine cargo to determine whether or not there is any salt-water damage, and frequently find no traces of salt at all.

(Testimony of John A. Bishop.)

Q. Upon whose request did Mr. Stewart examine the steel plates?     A. At my request.

Q. Why?

A. I was notified that there would be a claim made against the vessel for this damage and I immediately instructed Mr. Stewart to examine the iron to determine its condition and the cause of the damage.

Q. Do you know when that examination was made, Mr. Bishop?

A. I think it was September or the beginning of October, 1910. I don't know the exact date.

The COURT.—Captain Stewart said September 30th. Is that date disputed?

Mr. LILLICK.—No, it is approximately correct, our Honor.

Mr. LILLICK.—That is all.

Cross-examination.

Mr. HENGSTLER.—Q. Was there a written report made by Captain Stewart of his examination to you, Mr. Bishop?

A. Not a written report, Mr. Hengstler; no.

Q. No writing at all?

A. There was no written report.

Q. But do you remember what the report was?

A. There was a verbal report to me which I immediately reported to our principals in London.

Q. And the verbal report was that the damage was due to what?     A. Salt water.

Q. Was there anything mentioned in the verbal

(Testimony of John A. Bishop.)

report which he made to you about coke or coke sweat?

A. He was not called in connection [55] with the coke; he simply examined the steel plates and reported that the steel plates were damaged by salt water.

Q. Did he report that the steel plates were pitted?

A. He did.

Q. And reported that in his opinion the pitting was due to salt water? A. Due to salt water.

Q. You did not instruct him at the time to determine whether the damage was made by salt water or by sweat?

A. I asked him to determine the cause of the damage and he reported salt water.

Q. Mr. Bishop, you are not a chemist, are you?

A. I am not a chemist but I have studied chemistry.

Q. Would you call yourself an expert in chemistry, Mr. Bishop?

A. No, I would not call myself an expert.

Q. Would you call yourself an expert in stowing?

A. In stowing cargo.

Q. Yes.

A. I have had considerable experience on claims made for stowage of cargo.

Q. Just looked at the cargo after the claim was made; that is all, isn't it?

A. I am not a seaman. It is merely the experience that I gained in handling such cases, but not as a seaman.

(Testimony of John A. Bishop.)

Q. When you want to know something about damage to a cargo, you do not determine it for yourself, but you hire an expert, don't you?

A. We hire an expert and frequently go down with the expert and make an examination ourselves.

Q. Do you happen to know, Mr. Bishop, whether pitting of steel plates may be due to other causes besides salt water?     A. Yes, it may be.

Q. If anybody dropped sulphuric acid on a steel plate, it would pit it, would it not?     A. Yes.

Q. It would eat right through?

A. I would not say it would [56] eat through, but I would say it would cause pitting, sulphuric acid would cause pitting.

Q. And other agencies would cause pitting?

A. Sulphate of ammonia will cause pitting.

Q. Would coke sweat cause it, in so far as you know?     A. I don't think so.

Q. You don't think so.

A. I have never heard of it.

Q. Have you ever heard of coke sweat doing damage to cargo in your experience?

A. Yes, I have under certain conditions.

Q. You have heard that very frequently, haven't you, Mr. Bishop?

A. Not more frequently than coming out in good condition.

Q. Now, Mr. Bishop, isn't it a fact that coke stowed in the hold of a vessel is a particular dangerous article, dangerous to general merchandise, and is recognized as such—isn't that a fact within

(Testimony of John A. Bishop.)

your own experience?

A. In our own experience it is an article which required care; yes, it does.

Q. It requires unusual care, does it not?

A. No more than other cargo of the same nature.

Q. That is true, but it requires more care than, for instance, chalk would, does it not?

A. Yes, I presume it would.

Q. It requires more care than substances that do not exude sweat to the same extent, does it not?

A. Yes, you have got to provide against sweat which is liable to arise in coke, but which does not necessarily arise from coke.

Q. Doesn't sweat necessarily arise from coke?

A. It does not necessarily arise from coke.

Q. But you know that sweat usually raises from coke, don't you, Mr. Bishop, in the holds of vessels?

A. No, I don't think so, Mr. Hengstler, not as strong as that. We have had a number of cases where damages has arisen from coke, numbers of cases, and we [57] have also had a number of cases of coke cargoes that have come out in perfect condition without any damage at all.

Q. It is undoubtedly the case in connection with merchandise with pig iron and things that would not be injured?

A. No, Mr. Hengstler, I am speaking of a cargo where the coke was laid on steel plates, and the steel plates came out in perfectly sound condition, where the coke was actually laid on steel plates.

Q. You have heard of such cargoes?      A. Yes.



(Testimony of John A. Bishop.)

Q. Have you ever seen such cargoes, have you ever seen steel plates?     A. I had it reported to me.

Q. But you never saw it?

A. I did not go down to the vessel myself.

Q. Did you believe it, and is it possible that coke laid upon steel plates, the steel plates came out in good condition?

A. Yes, I have every cause to believe it.

Q. I did not ask you whether you had had cause to believe it. I asked you whether you actually believed it?     A. Yes, I actually do believe it.

Q. What relation has coke to moisture generally, Mr. Bishop?

A. Why it will absorb and give off moisture.

Q. Very freely, does it not?     A. Yes.

Q. It is like a sponge, isn't it?

A. Pretty nearly so.

Q. As far as it absorbs moisture from the atmosphere, and will exude it again?

A. No, I don't think it will absorb moisture from the atmosphere, Mr. Hengstler.

Q. Or any moisture that happens to be around?

A. If it rains on it it will absorb moisture.

Q. Mr. Bishop, isn't coke when it is being manufactured, cooled off by water being poured on it when it is hot?

A. I believe it is, but I never had any personal experience, no knowledge of that. I have heard so.

[58]

Q. Mr. Bishop, do you know that there is an allowance for excess moisture of every coke cargo that



(Testimony of John A. Bishop.)

comes to San Francisco?      A. Yes, a small amount.

Q. There is usually a contract by which a certain amount is allowed and everything in excess over that is deducted from the price of the coke, that is the custom, is it not?      A. I believe it is.

Q. Isn't it also a fact that 3% is the usual allowance for the moisture in coke after its arrives here?

A. I could not say as to that, Mr. Hengstler.

Q. But you know it is something in that neighborhood?

A. I know there is a small percentage, but I don't know what the percentage is.

Q. You also know, don't you, Mr. Bishop, that sometimes the amount of water in the coke is over 10% when it comes out of a vessel?

A. Under extraordinary conditions; yes.

#### Redirect Examination.

Mr. LILLICK.—Q. You stated under cross-examination by Mr. Hengstler, Mr. Bishop, that you have had occasion to go down to examine cargoes with experts. Have you ever had occasion to go down to a cargo of a ship laden with general merchandise and coke prior to the arrival of the "Dolbardan Castle"?

A. Yes, we have had several cases of cargoes of cement and coke.

Q. Had you ever at any time prior to the arrival of the "Dolbardan Castle" ever seen a vessel having general cargo and coke combined where there were any particular precautions that were not taken upon the "Dolbardan Castle" to prevent sweat from the

(Testimony of John A. Bishop.)

coke reaching the general cargo?

Mr. HENGSTLER.—I object to that, if your Honor please; it does not appear that the witness knows anything about the precautions that were taken on the “Dolbardan Castle.” [59]

Mr. LILLICK.—I will ask Mr. Bishop whether he knows.

Q. Mr. Bishop, do you know how the cargo was stowed upon the “Dolbardan Castle”?

A. I did not see the stowage of the cargo myself, but I had reports from various sources as to how it was stowed.

Mr. HENGSTLER.—I object to it if the witness did not see it.

Mr. LILLICK.—Q. Mr. Bishop, if the cargo upon the “Dolbardan Castle” was stowed in such a manner that between the coke and the cement and these steel plates, a bulkhead was built, or bulkheads were built of boards, laid athwartships one upon the other, so that daylight could not be seen through them, and then upon that bulkhead of boards matting was laid, would you consider that kind of protection a sufficient protection to general cargo?

Mr. HENGSTLER.—He has said he is not an expert on stowage, if your Honor please, and I object to it.

Mr. LILLICK.—I will meet that objection.

Q. Mr. Bishop, in your experience as an average adjuster and your actual actions with respect to the examinations of cargoes, have you ever had occasion to make up your own mind whether or not a cargo

(Testimony of John A. Bishop.)

was properly stowed with reference to sweat from coke to a general cargo?

Mr. HENGSTLER.—I object to that, if your Honor please; the witness has already stated and admitted that he is not an expert on stowage; he is an average adjuster; if as an average adjuster he has made up his mind, that is evidently immaterial.

Mr. LILLICK.—Apparently we are at issue in respect to whether or not it is necessary that a man be an expert to judge whether a cargo is properly stowed to protect it from the sweat, by taking certain precautions. As Mr. Bishop is an average adjuster, [60] and with Mr. Bishop's experience as an average adjuster extending over 10 years, and his having been called, as he says, frequently to go down to vessels for the purpose of examining their cargo and see whether or not damage had been caused and the reason for that damage, he certainly is in a position to testify as to whether or not the damage is caused by sweat or whether or not a bulkhead is a sufficient bulkhead between the coke and general cargo.

Mr. HENGSTLER.—I think the question is entirely objectionable. The witness has not testified that he knows anything about the kind of bulkheads that are required for the purpose of stowing merchandise.

The COURT.—No, he has not.

Mr. LILLICK.—Then I will ask him.

Q. Do you know anything about the usual and customary way of stowing cargoes?

(Testimony of John A. Bishop.)

A. In the course of our business we have represented owners in probably 75 per cent of the cases of damaged cargoes coming to this port; a large number of those cases have been damaged due to carrying coke and general cargo. There were very serious claims in the year about 1908, 1909, so serious, that we decided to take it up with the various surveyors in the Port of San Francisco to determine whether or not coke and cement or general cargo could not be carried in the same ship without being damaged. I personally called a meeting of the various surveyors, and they recommended that bulkheads be built between coke and other general cargo. Those recommendations were forwarded by me personally to our representatives in London, who issued circular notices to all ship owners in Great Britain and France, and the result of that notice was that bulkheads were put up, and this ship, I think, was one of the first ships to sail after that time, [61] after receiving our notice and the recommendation which we had received from the surveyors in this port.

Q. What was the usual and customary manner of carrying coke and general cargo before this time?

A. Prior to that time, in a great majority of cases that came under our notice there were no bulkheads at all between the coke and the general cargo. There were merely sails or matting dividing the coke and the general cargo.

Recross-examination.

Mr. HENGSTLER.—Q. But it is a fact, is it not, Mr. Bishop that the largest part of damage cases

(Testimony of John A. Bishop.)

came from the fact that general cargo was carried in the ship in connection with coke; that is a fact, is it not?

A. That is a fact, without proper means being taken to divide them, separate them.

**[Testimony of Thomas Wallace, for Respondent.]**

THOMAS WALLACE, called for the respondent, sworn.

Mr. LILLICK.—Q. What is your occupation, Captain? A. Marine Surveyor and Port Warden.

Q. How long have you been Port Warden of the Port of San Francisco?

A. Four years last March.

Q. During the course of those 4 years how many vessels have you approximately examined, Captain?

A. Several hundred—I don't know exactly how many.

Q. Did you have occasion to examine the "Dolbardan Castle" when she arrived in August, 1910?

A. Yes.

Q. Do you remember the examination you made of that vessel with respect to her stowage, Captain?

A. Yes, I know something about [62] it. If you will let me look at my records that I made at the time, I have got them here—

Q. (Intg.) I have here, Captain, a certificate from you of an examination of the "Dolbardan Castle," which is an exhibit in the case, Respondent's Exhibit "H."



(Testimony of Thomas Wallace.)

A. This was made August 8, 1910; that is my signature.

Q. Captain, do you remember examining the bulkheads and the matting upon these bulkheads that separated the coke from the cement and the steel plates in that vessel?     A. Yes.

Q. In your opinion, Captain, was that proper stowage?     A. It was.

Q. The document you hold in your hand was issued by you, was it, Captain?

A. Yes. This was copied by the secretary. I gave my memorandum to the secretary and the secretary copied this from the memorandum. It is the same as is in the book.

Q. It is an official document issued from your office?     A. Yes.

Q. Captain, do you remember examining the cement that was stowed upon that vessel?

A. Yes.

Q. Do you remember the upper tiers of the barrels that were in the hold of the vessel?

A. I can quote from this, because I remember that, I remember that particularly, but this says, examined the vessel at 8 A. M., when the hatches were taken off, I examined her for ventilation, and I went at 10 A. M., when they commenced, before they commenced to discharge, after they got the gear rigged, and here is what I say—

Mr. HENGSTLER.—(Intg.) Captain, just testify to what you know now. We do not care what you then said.



(Testimony of Thomas Wallace.)

Mr. LILLICK.—Q. Perhaps you can answer my questions, those that I desire to ask you without that? A. Yes.

Q. What did your examination show with reference to the cause of the damage done to that cement?

A. The top tiers or crates of [63] cement right abreast of the main mast and out in the wings were, the iron hoops were rusted, and I got a hammer and tested the barrels, hammered them, and I told them there were a whole lot of the top tier that was caked.

Q. What in your opinion was the cause of the caking?

A. I then made the test immediately on the barrels and on the hoops for salt water.

Q. What did you find?

A. It showed salt water very plainly.

Q. Captain, what was the condition of the vessel with reference to apparent seepage through the decks of salt water?

A. Well, it was not so bad on the decks, but right alongside the mast and the mast partners, around the main mast, it showed where the water had leaked down there pretty badly.

Q. How is the mast secured as to the timbers supporting it in the deck; how was it?

A. Well, it was just the usual rim and then the wedges going down in the deck, and then there was the usual covering on deck over the wedges.

Q. What did that wood show, if it showed anything, as to stains, or other evidence of salt water?

Mr. HENGSTLER.—On the outside, you mean?

(Testimony of Thomas Wallace.)

Mr. LILLICK.—Q. I mean inside, over where this cement was?

A. It showed that water had leaked down alongside of the mast partners and along the sides of the wedges.

Q. What was your opinion, Captain, as to the general stowage of that vessel as to being good or not good? A. It was good, as far as that goes.

Cross-examination.

Mr. HENGSTLER.—Q. Who asked you to look at the cement and [64] steel plates?

A. This certificate says I was employed by the master of the ship, Captain Baxter. I went and interviewed Captain Baxter on his arrival here, and asked him if he wanted to engage a Port Warden. I asked him if he wanted to engage a Port Warden to survey his hatches and look out for the stowage of his cargo and he hired me.

Q. Now, you came to the conclusion that that cargo was properly stowed, did you, Captain?

A. It was a well-stowed cargo.

Q. I asked you, was it properly stowed, according to your notion of proper stowage?

A. Yes, properly stowed.

Q. Properly stowed? A. Yes.

Q. It was well stowed? A. Yes.

Q. What was in the ship besides this cement?

A. Well, there were steel plates and there was bar steel and there was cement, and there was a very small quantity, if I remember right, of merchandise; but that was stowed away aft in the run of the ship;

(Testimony of Thomas Wallace.)

that is, I don't know what it was, a small quantity of something, but that came out in perfect condition, and I made no comment on that.

Q. Did they have anything else besides what you have mentioned stowed in that ship?

A. Well, there was some small steel bars, and there was plates and there was cement.

Q. You are now speaking of the general merchandise compartment, aren't you, Captain?      A. Yes.

Q. And you are sure that there was general merchandise in there, are you?

A. General merchandise, nothing only what I am speaking of. There was cement and other stuff right in there in the center.

Q. Cement and other stuff; what was the other stuff besides the cement. That is what I want to know?

A. I don't remember anything else that was there  
[65]

Q. Only cement?

A. There was cement and steel—well, now, I am not—I did not make any comment of that sort, because nothing of that sort was damaged.

Q. You don't really know what was in her at all, do you, Captain?      A. I certainly do.

Q. Outside of the cement?

A. The cement and the steel.

Q. What kind of steel?

A. They were plates of steel and there were bars of steel and bundles of steel.

Q. Do you remember those?      A. Yes.

(Testimony of Thomas Wallace.)

Q. Whereabouts was the cement stowed?

A. The cement was stowed on top.

Q. The top?

A. On the between-decks and between—it was down in the between-decks on top of the other stuff in the between-decks.

Q. In the between-decks?

A. There were two tiers of cement.

Q. Two tiers of cement?

A. There was cement on top of the steel in the between-decks; that is right up under the deck; then when they came to open up the hatch-way, why, there was some more cement down below.

Q. You mean down in the hold?

A. Down in the lower hold.

Q. What else was down in the lower hold besides the cement?

A. I don't remember anything else besides the plates of steel and these girders.

Q. There were plates of steel down in the lower hold too, were there?     A. Yes, there were.

Q. You have not said so; that is what I am trying to get?

A. I said steel plates, I think, a moment ago.

Q. Where were these steel plates in the lower hold with reference to the cement?

A. With reference to the cement, underneath—the steel plates were underneath the cement. [66]

Q. Did you look at the steel plates at all?

A. Certainly.

Q. Now, outside of that department where these

(Testimony of Thomas Wallace.)

things were, the cement and the steel plates and the steel bars and the steel bundles, or whatever you call them?     A. Yes.

Q. Outside of that was there any general merchandise in there?

A. You mean in this amidships compartment?

Q. Yes.     A. Not that I remember of.

Q. Nothing else?     A. Not that I remember of.

Q. What was in the rest of ship?

A. There was coke forward and aft.

Q. Coke forward and aft; much coke?

A. Yes, a great lot of coke.

Q. Almost the whole cargo consisted of coke, did it not?

A. No, not almost the whole cargo; there was a big part of it.

Q. The larger part of it consisted of coke, did it not?

A. No. All this amidships compartment, which was as big as the other two compartments combined, was nearly full of this merchandise in the middle of the ship.

Q. How large was that in the middle of the ship, that compartment?     A. I did not measure it.

Q. What proportion of the hold of the ship would you say it would take up?

A. About one-third of it.

Q. About one-third of it?     A. Yes.

Q. And all the rest of it was coke, was it not?

A. The forward and aft compartments of the bulkheads were coke.



(Testimony of Thomas Wallace.)

Q. With reference to these bulkheads, Captain, you say that they were the proper kind of bulkheads?

A. They were the best bulkheads I had seen for carrying coke up to that time.

Q. Do you think that they were air-tight?

A. No.

Q. Not air-tight?      A. Not air-tight.

Q. Do you think that these bulkheads were sweat-tight?

A. Well, [67] the boards were fitted as close as they could be for boards that were not planed and dressed off; and they were fitted with mats part of the way up on both sides, and on one side all the way up; that is the side where the merchandise was, right up.

Q. You say there were mats on the outside of the bulkheads, on the coke side of the bulkheads?

A. Up above.

Q. Are you sure, Captain, about that?

A. I am sure on the after end. I can be positive on the after end; the forward end I am not so sure of.

Q. If the captain of the vessel himself and the officers of the vessel, testified that mats were only in the general merchandise compartment, then you will admit that you are mistaken about the mats being outside, won't you?

A. I don't know, I am not sure; my impression is I took the mate and went through the hold, right down in the after hold, the second day down there, when they were commencing to discharge the coke, and I asked him if the mats went all the way down.



(Testimony of Thomas Wallace.)

I know they were right up to the top so as to prevent sweat going through betwixt the beams, and they went down all the way.

Q. They were outside?

A. In the coke compartment.

Q. Outside and in the coke compartment?

A. In the coke *department*.

Q. What were they?

A. Just these regular Chinese mats.

Q. Just ordinary Chinese mats?      A. Yes.

Q. Ordinary dunnage mats?

A. Ordinary dunnage mats.

Q. What are they made of, Captain?

A. Made of the same as the others, this Chinese matting, rough Chinese matting.

Q. Rough grass?

A. Yes, rough grass matting.

Q. And you say these mats were also inside the general merchandise compartment, do you?

A. They were there and they were nailed up there.

[68]

Q. When did you see them? Did you see them while the cargo was still in the vessel or after it come out?

A. I visited the vessel three times the first day when she was discharging, and the next day I visited her twice, on the 10th I visited her once, on the 11th once.

Q. That was during the time when the cargo was discharging?

A. When the cargo was discharging I went down

(Testimony of Thomas Wallace.)

through the holds; I went down through the holds each and every time I went there.

Q. Then you took a good look at those bulkheads, did you?     A. I did.

Q. How were they constructed?

A. They were constructed with up and down stanchions, and these planks were nailed on to them.

Q. The planks were nailed on to them. Were they tongue and groove?     A. No.

Q. They were not tongue and groove?     A. No.

Q. Were they battened?

A. They were not battened.

Q. It would have been better, would it not, if they had been tongue and groove—it would have been a better bulkhead?     A. Certainly it would.

Q. It would have been a better bulkhead if it had been battened, would it not?

A. Certainly; if it had been battened it would have made a much better bulkhead.

Q. Now, how thick were the boards of that bulkhead, Captain?     A. About 2 inches.

Q. About 2 inches?     A. Yes.

Q. Are you sure about that Captain?

A. Well, I am only talking from my recollection, I did not measure them; but I measured it looking at it with my eye at that time. I don't think they would attempt to put a bulkhead up that was less than 2 inches to hold the coke in, from dumping into the other part. [69]

Q. Now, they might have been still thicker—might they have been 3 inches?

(Testimony of Thomas Wallace.)

A. They might have been.

Q. They might have been 3 inches? A. Yes.

Q. Might they have been thinner than 2 inches?

A. No, I don't think so.

Q. You don't think so? A. No.

Q. You are prepared to say here that they were two-inch boards, are you? A. That is my opinion.

Q. Therefore, if the captain of the vessel testified, as he did, that they were  $\frac{3}{4}$  inch boards, he is mistaken?

A. I don't think that  $\frac{3}{4}$  inch would hold the stuff back.

Q. Supposing they had been  $\frac{3}{4}$  inch boards, Captain, then this heavy coke pressing against these boards would have made cracks in the boards, would it not? A. It would have been liable to.

Q. It would have been liable to? A. Yes.

Q. And through these cracks the sweat would have penetrated, if only  $\frac{3}{4}$  inch boards were used?

A. The matting was up there intact, the matting had not moved a particle when I examined the bulk-heads.

Q. Well, Captain, but this sweat would have gotten as far as the matting and would have penetrated the matting, would it not—would it not have done that?

A. To a certain extent, but there was no sign of sweat coming through the matting; it was perfectly dry.

Q. At the time when you saw it it was perfectly dry? A. Yes.

(Testimony of Thomas Wallace.)

Q. But you admit that if those boards were  $\frac{3}{4}$  of an inch thick that the sweat of the coke would have gotten through the cracks and would have gotten into the matter, would it not?

A. It would have done the same thing if it had been 3 inches; [70] if there had been sweat, it would have gone through the space betwixt the boards.

Q. But it would be more likely to go through that space if it was a thin board than if it was a thick board, would it not?

A. If it was a thin board which held the pressure of the coke, the sweat would be no more liable to go through the thin board than the thick one.

Q. Now, Captain, isn't it a fact that if that sweat got into the dunnage mats, the dunnage mats far from preventing damage, would do more damage because it would collect that sweat and it would drop down from the dunnage mats on to the cargo?

A. They would absorb the sweat. They would have a tendency to absorb the sweat.

Q. Don't these dunnage mats have a tendency to absorb sweat? A. Certainly; yes.

Q. A great tendency, haven't they, to absorb it?

A. Dry it up.

Q. Now, you say you examined the cement, Captain? A. Yes.

Q. When?

A. I examined it in the ship and examined it on the dock and examined it every day as long as she had a barrel in her.

(Testimony of Thomas Wallace.)

Q. And you found that the upper tier—

A. (Intg.) Was much the worse.

Q. Was the worse?

A. Yes. That was worse, that was caked.

Q. That was caked? A. Yes.

Q. Was it uniform, that caking? Was that damage spread over the upper tier uniformly or was it localized?

A. No, not all over; it was worse in the wake of the main mast, abreast of the main mast on each side, and in the wings, than it was anywhere else.

Q. But it was somewhat damaged all over, was it not?

A. No, I could not say it was damaged, only that the hoops on the barrels were rusty. [71]

Q. All over, were they not?

A. More or less; I think it was nearly all over—let me look just a moment.

Q. Captain, do you know whether if coke sweat comes in contact with cement it is liable to cake it?

A. You mean coke sweat?

Q. Or any sweat?

A. Well, if a ship sweats enough it will.

Q. Now, a ship that contains coke is likely to sweat more than a ship that does not contain coke, isn't it?

A. Certainly.

Q. As a matter of fact, ships that contain as much coke as this are full of sweat, aren't they?

A. I have made the remark that there was scarcely a sign of sweat to be seen in the ship, in the amidships compartment.



(Testimony of Thomas Wallace.)

Q. Are you prepared to say, Captain, with your experience, that if there is coke carried in the hull of a vessel, practically filling it up, or filling up three-quarters of that, that that vessel is not necessarily full of sweat as the vessel passes through the Tropics, the vessel passing through the Tropics twice and going around Cape Horn? What would be the influence of the heat upon that coke while the vessel passes through the Tropics, Captain?

A. It would cause it to sweat.

Q. It would cause it to sweat and that sweat goes up in vapor to the deck?

A. Yes, and when it comes to getting into cool weather down off Cape Horn it condenses on the beams and comes down.

Q. Comes down like rain all over?

A. To a certain extent.

Q. And that happened twice to this ship because she went around Cape Horn, didn't she?

A. Yes, but this ship was exceedingly well ventilated.

Q. Exceedingly well ventilated? A. Yes.

Q. How was this portion of the cargo that you spoke of, the cement [72] ventilated?

A. The cement?

Q. Yes.

A. It had a big 18-inch ventilator right in the center of this compartment to take the heat up as it generated in the hold.

Q. How far down did that ventilator go?

A. That ventilator went down right to—only to be-



(Testimony of Thomas Wallace.)

low the main deck.

Q. Below the main deck?      A. Yes.

Q. Did it go below the between-decks?

A. No, I don't think so.

Q. Are you sure about that?

A. I am not positive.

Q. It might have gone below the between-decks?

A. It might have gone, but that is so long ago, and I did not make any memorandum at that time; I am not prepared to say.

Q. Suppose it had gone below the between-decks, would it have done anything toward ventilating the between-decks?      A. If it had gone below?

Q. Yes.

A. Of course if it had been turned—these ventilators are supposed to be turned from the wind, and the wind blows on the back, and it causes a vacuum and the hot air ascends and comes out.

Q. No matter how it is turned, if the ventilator reaches down below the between-decks and into the hold, does that contribute to the ventilation of the between-decks, if there is a floor on the between-decks?

A. If there is no opening in the between-decks in the ventilator, no.

Q. Did you see any openings in the between-decks in the ventilator, in the between-decks part, Captain?

A. I don't know, I have no recollection. I looked at the ventilators, but I didn't make any memorandum of how far the ventilator [73] went down. I

(Testimony of Thomas Wallace.)

don't suppose it went any farther than the main deck.

Q. But if it did go below the between-decks and there was no opening in the between-decks, then you would say the between-decks was not ventilated at all, as far as the ventilator was concerned?

A. Well, it would be on that ship to a certain extent for the simple reason it had no hatches on.

Q. How do you know, Captain—were you on the voyage? A. I mean on the between-decks.

Q. She had no hatches on, you say?

A. The hatches were open.

Q. When the cargo came out?

A. When the cargo came out.

Q. You don't know whether the hatches were open during the voyage, do you?

A. Not the upper deck hatches; I am talking about the between-decks hatches.

Q. I am speaking of the ventilation between-decks. The hatch on the main deck is the only thing that could ventilate the between-decks outside of the ventilator, isn't that so? What has the hatch in the between-decks got to do with the ventilation of the between-decks?

A. It has nothing particular to do, only *if gets* warmer up above than it is down below the thing will go down there and will pump this up when there are no hatches on the between-decks.

Q. You are willing to say, are you not, Captain, if that ventilator went below the between-deck and there was no ventilator between-decks, then as far

(Testimony of Thomas Wallace.)

as that ventilator is concerned it would have nothing to do with the ventilation of the between-decks. You are willing to say that, are you not?

A. Very little. It would have very little to do.

Q. What would it have to do?

A. If the hatches were off in the between-decks, and a certain amount of the air drawn up, it would draw the air through these between-decks and draw it up to the ventilator. [74]

Mr. HENGSTLER.—I will leave that to your Honor, that theory.

Q. Now, Captain, there is one more thing I want to ask you. Do you remember the case of the “Jean Bart,” of the Italian Swiss Colony, against the “Jean Bart”?

A. I don’t know, I am sure. What year was it?

Q. It was in 1911, about 2 years ago. Do you remember that you testified in that case on the nature of the stowage of coke cargo? A. Yes.

Q. You remember that. A. What ship was it?

Q. The French ship “Jean Bart”?

A. Yes, I remember that.

Q. You testified for the Italian Swiss Colony, did you not? A. I am not sure whether I did.

Q. I will stimulate your memory; it was in reference to damage to Chianti bottles?

A. Yes, Chianti bottles.

Q. Where the straw—

A. (Intg.) Was all rotten.

Q. (Intg.) Was destroyed by the coke sweat?

A. Yes, I remember.

(Testimony of Thomas Wallace.)

Q. You remember at that time you testified on the nature and result of coke sweat? .

A. Yes, I think I remember it.

Q. Captain, did you not in that case testify to this effect—

Mr. LILLICK.—(Intg.) If your *your* Honor please, this is not proper cross-examination, and apparently the witness is going to be called upon to testify to something he testified in another case, not exactly the same kind of a case.

The COURT.—The objection is overruled.

Mr. HENGSTLER.—The Captain testified in this case that the damage was due to salt water.

Mr. LILLICK.—In that case, so far as we know, the conditions may not have been the same in the “Jean Bart” case as they are in this case. If they are not the same—

The COURT.—That would appear from the question. [75]

The WITNESS.—I will have to look that up. I have the “Jean Bart” case in the book.

The COURT.—Counsel will refresh your memory as to what you testified.

Mr. HENGSTLER.—“Q. Well, do you know what the effect of stowing coke in ships has upon merchandise? A. Yes, I do know that.

“Q. What is it?

“A. Nearly always when the merchandise is stowed close to the coke the merchandise is damaged.

“Q. Why is that?

(Testimony of Thomas Wallace.)

“A. From the sweat caused by, or rather which the coke gives out. Coke coming from Europe, it goes twice through the Tropics, and it gets down in hot weather and it goes up; it gives up a sweat and it collects everywhere; it will go everywhere, go through the decks, and then when it gets down to the cold weather it will condense and hang on and then it will wet everything. In my idea there is only one way to protect that and that is to put up a bulkhead, double bulkheading, and have tar paper between and have ventilation in the compartment so as to let the air in and let it out; you have got to have circulation in there to take care of this excessive amount of moisture the coke gives off.

“Q. How does coke in that regard compare with other merchandise stowed in ships with reference to the amount of moisture which it absorbs and which evaporates from it?

“A. Well, coke is the worst cargo that I know of.

“Q. How is chalk in that regard, do you know?

“A. I never found much damage with chalk, because chalk, they generally put in the bottom of the ship and cover it with a piece of canvas, generally, and then boards on top of that; that is the general way of stowing chalk. [76]

“Q. Suppose coke and chalk is stowed in the hold of a ship and general merchandise is stowed right in the same hold of the same ship, how should the general merchandise be protected in order to make a proper stowage, Captain?”

Mr. LILLICK.—If your Honor please, I don't



(Testimony of Thomas Wallace.)

know what the object of Mr. Hengstler in reading this testimony in the other case is, but I object to his doing that. The effect of reading this other testimony into this record, it seems to me, has an inherent vice, and that is it is impossible for us in any way to counteract the testimony there affecting the facts in this case.

Mr. HENGSTLER.—They are the same facts. He testified in that case under the same circumstances with reference to the nature of coke.

Mr. LILLICK.—You have not asked the witness any question about it; you are reading into this record the testimony in that case.

Mr. HENGSTLER.—I am asking the Captain if he testified in that case in that way, which his testimony shows. I think it is perfectly proper.

The WITNESS.—I can answer in regard to that.

Mr. HENGSTLER.—I am not through with that; there is more.

Mr. LILLICK.—We ask that the testimony that Mr. Hengstler has just read from this other record be stricken out from this record upon the ground that it is immaterial, irrelevant and incompetent and has no proper place in this record.

The COURT.—The objection is overruled. I can see the purpose of it. Your witness came here and testified this was proper stowage in the case of coke with these bulkheads and matting. Now, it seems that he testified in the other case that the only proper stowage would be a double bulkhead with tar paper between. [77]



(Testimony of Thomas Wallace.)

Mr. LILLICK.—Here is our position: Suppose we have a vessel that had at that time the best known means of protecting the cargo. We have only to show to your Honor the fact that we loaded that cargo in the usual and customary manner for that type and kind of cargo, and if we do that, any damage that results to that cargo is not our fault.

The COURT.—You put this witness on the stand to testify that a single bulkhead with matting was proper stowage to separate coke from other cargo. In the former trial he testified that the only proper way was by double bulkheading and tar paper between. I think the testimony is relevant.

Mr. LILLICK.—If Mr. Hengstler is using this testimony for the purpose of impeaching the witness that would be one thing, that is perfectly proper.

The COURT.—I cannot conceive of any other reason.

The WITNESS.—Mr. Hengstler, I would like to ask you a question.

Mr. HENGSTLER.—Let me finish first. I want to finish the whole testimony on that point, on the point of coke sweat and bulkheading. I want to present to the Court the facts about this kind of stowage and about bulkheads.

“Q. Suppose coke and chalk is stowed in the hold of a ship and general merchandise is stowed right in the same hold of the same ship, how would the general merchandise be protected in order to make a proper stowage, Captain?

“A. In order to make a proper stowage one has

(Testimony of Thomas Wallace.)

to go to work and have a double bulkhead with tar paper in between the bulkhead, and have ventilation in each compartment. The ventilation is to take up the heat in there, allow the air to go down one and come [78] up the other so as to give a good circulation of air. There is another way in which it can be done.

“Q. What is the other way it can be done?”

“A. By laying boards on top of the coke and then getting canvas sails and laying them down and carrying them all over the merchandise that is liable to be damaged; cover it over and nail it down so that the moisture cannot get through; the canvas will prevent the moisture from going through into the goods.

“Q. If the coke is separated from the general merchandise in its neighborhood by a wooden bulkhead, would you consider that proper stowage?”

“A. What sort of a bulkhead?”

“Q. By shifting boards.

“A. No, sir. It has got to be air-tight.

“Q. It would have to be air-tight? A. Yes, sir.

“Q. Have you ever seen a wooden bulkhead in your experience that was air-tight?”

“A. Just the ones I have been describing.

“Q. The ones that you have been describing, double bulkheads with— A. Tar paper betwixt.

“Q. But a single simple wooden bulkhead, is that ever air-tight? A. None that ever I have seen.”

Captain, did you testify in the case of the “Jean Bart” in that way?

A. I did. I think if you will look up the record

(Testimony of Thomas Wallace.)

that was after this case, though. Was not that a year after this case.

Q. After this case?

A. The case we are talking about, this "Dolbardan Castle."

Q. I don't know whether it is or not.

A. The record in the first one is 1910 and the other is 1911. We are all the time learning a little more how these things are done. If you find a little more out in a year what the best way to do is, you take advantage of it.

Q. You think the better way is one bulkhead, do you? [79]

Mr. LILLICK.—Q. Do you remember the cargo on the "Jean Bart"?

A. I remember it.

Q. It was an unusually wet cargo, was it not?

A. Certainly. They used the merchandise there, you almost might say, for the purpose of a bulkhead.

Q. Haven't you see cargoes of coke coming to this port and general merchandise also without any bulkheads between them that have come out perfectly clean and free from sweat?

A. Yes, I have. They are covered with canvas, canvas put up and then the coke put in afterwards.

Q. Have you ever in all your experience seen a vessel stowed as was described in the evidence and read to you in the "Jean Bart" case with bulkheads with tar paper in it?

The COURT.—He said he had not.

(Testimony of Thomas Wallace.)

Mr. LILLICK.—Then my recollection is entirely wrong.

The COURT.—I do not understand that he said he had ever seen it, but that would be a very good way to do it.

Mr. LILLICK.—Q. You have never seen it?

A. I have never seen it.

Mr. HENGSTLER.—He has never seen a single one except in the case of the double one—

The COURT.—I don't think he testified there as to any kind he had seen, but that that was the best way, or proper way to erect a double bulkhead and put tar paper in. He does not say he saw any such one.

Mr. LILLICK.—Q. It is a fact that you were reasoning out in this "Jean Bart" case the absolutely impossible way of having any sweat get into the cargo from the coke. If you put up a double compartment and tar paper between and hermetically sealed it up, then there would be no way of sweat coming through?

A. That is something [80] I reasoned out, and I also made a cut of that thing for Johnson and Higgins and told them that was the only way I thought the thing could be done.

Mr. LILLICK.—Will you read the question? Mr. Hengstler I have never heard of cargo stowed that way, and I don't believe anybody ever has.

Mr. HENGSTLER.—That is what I thought when I said he had testified to it.

Mr. LILLICK.—Q. Did you ever hear of cargo

(Testimony of Thomas Wallace.)

being stowed that way? A. I never seen any.

Mr. HENGSTLER.—This is the one he seems to have been describing putting boards on top of the coke, then getting canvas and covering all merchandise over that is liable to be damaged. I did not gather from that, although the Captain may have meant it, that he had seen bulkheads made in that way.

A. I have not meant it; I have never seen any.

The COURT.—Q. Double bulkheads with tar paper between?

A. Yes. There is for coal. There were some coal ships came here and they went to work and loaded in Antwerp, and when they loaded they were to go to Cardiff, and take in Cardiff coal, and that Cardiff coal will sweat more; that is dirty. I wrote a letter at some of the owner's suggestion, suggesting they put a bulkhead the same as I put there, with tar paper betwixt and double bulkheading; with the tar paper fitted in between the beams, that would protect it and prevent the coal dust from getting out, and the sweat from getting through at the same time. I have never seen a bulkhead put up that way, because that is an expensive proposition.

Mr. LILLICK.—Q. You have never known of coke being carried in that way? A. Never.

Mr. HENGSTLER.—Q. What I referred to is this, "have you ever [81] seen a wooden bulkhead in your experience that was air-tight? A. Just the ones I have been describing." That would infer he had seen them.



(Testimony of Thomas Wallace.)

A. That might have been the one I have been describing for the purpose of putting in the coal ships. These tramp ships when they come out they load up all the cargo they possibly can and then they go around to take fuel in at Cardiff, and they used to go to work and put up any sort of bulkheads, and of course when they came out here the cargo would be all covered with coal dust and be damaged all over.

Mr. LILLICK.—Q. Captain, going back to your recollection of your examination of that cargo; you did examine this particular ship, the “Dolbardan Castle,” and examined these bulkheads with reference to finding out whether or not it was sweat?

A. Yes.

Q. Did you find any?

A. I did not. Here is one of the memoranda that I made at the time. I remember it very particularly. It is before they ever pulled the bulkhead down, before the bulkhead was taken down; it is on August 15th; the bulkhead was taken down and discharged coke over the top of the steel plates; the plates were seen to be clean and bright. In the after end before the bulkhead was taken down, clean and bright; there was no sweat on the after end. I remember they pulled the bulkhead down; it was easier to take the coke over the top of the plates and discharge it through the main hatch than it was to take it out the small hatch aft.

Q. Captain, there would be a possibility, not only a possibility but a probability, that salt water dis-



(Testimony of Thomas Wallace.)

charged into the hold of the vessel by reason of the seams opening, and after it was down into the hold of the vessel when it went through the Tropics would evaporate and cause sweat or this vapor that they call sweat in the [82] hold of a vessel, would it not?

A. It would have a tendency to do that. Of course the heat would cause it to dry up and the salt crystals would stay on the iron, iron that was not painted, such as was on the hoops of the cement barrels.

Q. And it would rise in the form of sweat and gather on the barrels, would it not? A. Yes.

Q. Captain, in examining the bulkhead of the "Dolbardan Castle" you did not see any salt in it?

A. I did not examine that; I merely looked at the matting on the outside.

Mr. HENGSTLER.—Q. You did not see any sweat in the middle compartment at all, did you, Captain?

A. I will look at my memorandum and see what I saw.

Q. Have you any recollection, Captain, as to whether you saw any sweat?

A. No; no signs of sweat on the coamings or on the beams, or on the sides of the ship. That is in the between-decks, I am speaking of.

Q. Have you any present recollection as to whether you saw any sweat in the middle compartment independent of what you have got there?

A. Well, no, I don't know as I have.

Q. You have not any recollection?

(Testimony of Thomas Wallace.)

A. No; it is so long ago I don't remember anything about that.

Q. Have you any recollection as to whether there was any sweat in the coke portion of the vessel, in the portion of the vessel that was loaded with coke?

A. In the after and forward ends?

Q. Yes.

A. There was some in the after end. I remember that.

Q. Do you remember whether there was some in the forward end?

A. Well, I do not. I only remember there was coke in that part of the ship, there was nothing else but coke, and I don't know as I went down in the fore peak of the vessel at all. I went in the after end because I thought there was some merchandise [83] stowed away in the after end. I think that is the reason why I went down.

Q. When you say that you did not notice any sweat at all in the general merchandise compartment, do you mean that you did not notice any moisture at all? A. No moisture.

Q. No moisture at all? A. It was dry.

Mr. HENGSTLER.—That is all.

Mr. LILLICK.—That is all.

**[Testimony of Raphael Lopez, for Respondent.]**

RAPHAEL LOPEZ, called for the respondent, sworn.

Mr. LILLICK.—Q. What is your occupation, Captain? A. Master mariner.

Q. How long have you been a master mariner?

(Testimony of Raphael Lopez.)

A. For six years.

Q. In what vessels have you sailed as master?

A. Large ocean passenger liners, cargo boats, cattle boats, passenger ships.

Q. Have you ever carried a cargo of coke in any of the vessels of which you were master?

A. Yes, sir.

Q. Captain, in 1910 would you have considered a cargo properly stowed where the forward portion of the ship had coke, the aft portion had coke and the middle general cargo consisting of cement and steel plates, where between the coke and the general merchandise a bulkhead was built of boards running athwartships so that they lay one upon the other so that daylight could not be seen through them and matting nailed over them, proper?

A. I would, sir. [84]

Cross-examination.

Mr. HENGSTLER.—Q. Where do you live, Captain?

A. In San Francisco; 440 Eddy Street.

Q. Who asked you to come here as a witness, Captain? A. Mr. Lillick.

Q. When did he ask you? A. Yesterday.

Q. Now, you say you have been a master mariner for six years; what was your business before that, Captain?

A. Officer in steamers and sailing ships.

Q. What kind of ships have you been master in?

A. Ocean liners, passenger ships, mail boats, cargo boats.

(Testimony of Raphael Lopez.)

Q. What cargo boats have you been master of?

A. The White Star line; cattle boats.

Q. Cattle boats?      A. Yes, sir.

Q. Have you ever been master of a sailing ship that carried coke?

A. No. I have been mate of a sailing ship that carried coke.

Q. How long ago, Captain?

A. 19 or 20 years ago.

Q. What was the name of that ship?

A. The "Hadden Hall."

Q. On what voyage were you mate?

A. To Australia.

Q. From where?      A. From London.

Q. That is all you know about coke carriage, 19 or 20 years ago, on one occasion when you were first mate?      A. Yes, sir.

Q. You were not responsible for that stowage of that coke at that time, were you?

A. The mate is always responsible for the stowage of the cargo.

Q. I thought the captain was always responsible for the stowage of a cargo.

A. The captain is never there when the cargo is being stowed; the captain is up at the office. [85]

Q. Were you responsible for the stowage of that cargo of coke on the ship "Haddon Hall" 19 or 20 years ago?      A. To a certain degree.

Q. To what degree?

A. Seeing that it was properly stowed.

Q. What else did the "Haddon Hall" carry at that

(Testimony of Raphael Lopez.)

time?     A. A general cargo.

Q. What kind of a general cargo?

A. What might be called notions in America.

Q. Notions?

A. Yes, milk and whiskey and coffee.

Q. And bottled goods?

A. Yes, bottled goods, and all that sort of thing, and bundles of cotton.

Q. Did she carry, to your knowledge, any cargo that was susceptible to damage by sweat?

A. No, we had no damage.

Q. I say, do you remember whether she carried any cargo on that voyage that you mention that was susceptible to sweat?     A. Yes, quite a lot.

Q. What cargo?     A. Cotton goods.

Q. Where were those cotton goods stowed in the "Haddon Hall"?     A. In the lower hold.

Q. Where was the coke?

A. In the forward end of the ship.

Q. Were there separate compartments in that ship?     A. No, none at all, sir.

Q. It was just one big hold?

A. Just one big hold.

Q. Was there any claim on those cotton goods, Captain?

A. No, none at all, sir; there were claims on broaching cargo.

Q. But no damage claim?

A. No, no damage claims.

Q. And that is all you know about it with reference to the cargo having been damaged, that there were no claims?     A. Yes. [86]



**[Testimony of W. F. Mills, for Respondent.]**

W. F. MILLS, called for the respondent, sworn.

Mr. LILLICK.—Q. What is your occupation?

A. Marine Surveyor.

Q. How long have you been Marine Surveyor?

A. 14 years.

Q. Prior to that time what was your occupation?

A. Prior to that I was in the stevedoring business in San Francisco.

Q. When were you on vessels, when did you follow the sea?

A. I followed the sea for 18 years steady.

Q. Have you ever been captain of a sailing vessel?

A. I have.

Q. Have you ever been on voyages from Antwerp or Rotterdam, or from France or from London down around the Horn and up on this side?

A. I never have been from the ports you mention; I have been from Liverpool.

Q. In any voyage you have ever gone on around the Horn have you carried coke as a part of your cargo?

A. I had some coke on one voyage from Liverpool to San Francisco, and a general cargo.

Q. General cargo with it?

A. Yes, bleaching-powder, caustic soda and pig iron and coal.

Q. Captain, during your experience as stevedore have you ever had occasion to load cargoes of coke and general merchandise?

A. No; I have discharged several cargoes.



(Testimony of W. F. Mills.)

Q. You have discharged several cargoes?

A. Yes, sir.

Q. Can you state whether prior to 1910 it was usual or customary to have air-tight bulkheads between a cargo of coke and general merchandise, in a general cargo carrier?

Mr. HENGSTLER.—Mr. Lillick, do you claim that it would be proper stowage? [87]

Mr. LILLICK.—There are a number of cases, Mr. Hengstler, holding that where a ship owner loads his cargo according to the customary and usual way of loading it he is not liable for any loss resulting from sweat.

Mr. HENGSTLER.—Pretty old cases, aren't they?

Mr. LILLICK.—This new theory that you are trying to impose upon us this afternoon results in our calling upon the old cases for the position we take, in addition to our exemptions under this charter-party.

Mr. HENGSTLER.—It is no longer a new theory since the "Jean Bart" has been reported.

Mr. LILLICK.—I decidedly disagree with you on that, Mr. Hengstler. Will you read the question, Mr. Reporter?

(Question repeated by the Reporter.)

A. To the best of my knowledge it was not.

Q. Captain, what, in your opinion, was the stowage of a vessel as to being good stowage or poor stowage, where she had a cargo of coke in her fore holds and coke in her aft holds and general mer-

(Testimony of W. F. Mills.)

chandise consisting of cement and steel plates in her amidships portion, where the coke was separated from the general cargo by bulkheads made of boards laid athwartships closely enough so that daylight could not be seen through between them, and then upon those bulkheads matting; would it be good stowage or bad stowage?

A. Well, yes, it would be good stowage; I should consider it would be taking good care of the cargo. I would hardly call it technically good stowage. It is taking good care of the cargo. [88]

Cross-examination.

Mr. HENGSTLER.—Q. Captain, you say you had experience with one vessel that carried coke?

A. I have had experience in discharging several.

Q. As a navigator?

A. As a master mariner, yes. I brought out some coke, I cannot recall how much it was; it was several years ago.

Q. How long ago was it, Captain?

A. Oh, it was 34 or 35 years ago.

Q. Do you remember the name of the ship?

A. That was the ship "Harvey Mills."

Q. What kind of a vessel was she?

A. She was a wooden ship, three decks.

Q. She was technically a ship? A. Yes.

Q. A wooden ship? A. Yes.

Q. And with three decks? A. Yes.

Q. Do you remember where the coke was stowed?

A. I think the coke was stowed forward.

Q. In the lower hold, or where?

(Testimony of W. F. Mills.)

A. I think in the lower hold; yes, sir.

Q. Where was the general merchandise stowed?

A. All over the ship excepting where the coke was.

Q. Was there any general merchandise in the lower hold?

A. No, I think the most of the merchandise was in the lower between-decks and some in the upper between-decks.

Q. As a matter of fact, the lower hold would only contain the very heavy cargo, would it not?

A. Not necessarily, no. It would not do to put the heavy cargo in the lower hold; that would be bad stowage. [89]

Q. The heavy cargo in the lower hold would be bad stowage? A. Yes.

Q. Is it not the usual method of stowage to put the heavy cargo in the lower hold?

A. No, quite the reverse. There is a center of gravity to a ship and the cargo that is stowed in a vessel has to be distributed according to its weight or bulk; it is not like piling it in a warehouse.

Q. It depends on the character of the vessel, does it not, as to where you put your heavy cargo?

A. No; if you put your heavy cargo on the bottom of the ship and send it to sea that way, the chances are she would have no masts in her if she got into bad weather.

Q. Where would you put your heavy cargo?

A. I would distribute it, some in the hold and some in the between-decks.

(Testimony of W. F. Mills.)

Q. So far as weight is concerned, what is the usual proportion of the weight of the cargo in the hold and the weight of the cargo in the between-decks?

A. In most of the late British vessels it is about one-third to two-thirds; that is, one-third in the between-decks and two-thirds in the hold.

Q. You do not remember, Captain, do you, what other cargo there was in the lower hold of that vessel, the "Harvey Mills"?

A. No, I do not; that was a long time ago.

Q. You say it is not customary to have air-tight bulkheads between coke and general merchandise?

A. To put an air-tight bulkhead in it would be necessary to have it caulked.

Q. It would have to be caulked?      A. Yes.

Q. If it were caulked it would be air-tight, would it not?      A. It would; yes, sir. [90]

Q. It would be sweat-tight too, would it not?

A. Yes, sir; it would have to be tight to prevent water or air going through it, to be perfectly air-tight.

Q. Supposing it were tongue and grooved, that would prevent the sweat and prevent the air from going through, would it not?

A. It would if it were properly put in. Then the ends would have to be tight or be caulked to prevent the air going through there.

Q. In the kind of a bulkhead Mr. Lillick described to you, where one board is just naturally placed on top of the other one, have you ever seen a bulkhead where you could not see daylight through?

(Testimony of W. F. Mills.)

A. Well, I don't know that I have ever seen bulkheads after they were left there but at the same time a bulkhead could be put in that way with matting where you could not see daylight through it.

Q. It could be?      A. It could be; yes, sir.

Q. But is it probable, Captain, that you could not see daylight between boards as you put one on top of the other, without connecting them, or without caulking, or anything?

Mr. LILLICK.—I object to the question on the ground that it is common knowledge; I don't know that we have to take this witness' opinion about that at all.

Mr. HENGSTLER.—The witness will probably agree with all of us that it is impossible not to see daylight through if that is the manner in which the bulkhead is constructed. I suppose everybody has seen rough-board cottage built, with one board nailed on top of the other one, and that you can see daylight through.

Q. Now, Captain, supposing the boards are only  $\frac{3}{4}$  of an inch [91] thick, the boards in that bulkhead, and it is constructed in that way, by placing one board naturally on top of the other one, would you say that that was a proper bulkhead to keep 1,000 tons of coke from the general merchandise compartment?

Mr. LILLICK.—If your Honor please, not having read the testimony, your Honor will not know that there is no testimony at all was piled flush against the bulkhead. That is a hypothetical question and



(Testimony of W. F. Mills.)

it is not based on any testimony in the case.

Mr. HENGSTLER.—I think it is all through the testimony that it was put in in bulk. The very object of the bulkhead is to keep it from going over to the other merchandise at all.

Mr. LILLICK.—No; quite the contrary; the bulkhead was put in with the prime object of obviating the sweat.

Mr. HENGSTLER.—That is also a matter of common knowledge and common sense. I am willing to leave that to the Court.

A. I am perfectly ready to answer the question.

Mr. HENGSTLER.—What was the question, Mr. Reporter?

(Question repeated by the Reporter.)

A. It most assuredly would be if there were sufficient uprights and if those uprights were near enough together. A closer bulkhead could be built with  $\frac{3}{4}$  inch stuff than it could be with 3-inch stuff. It must necessarily have sufficient uprights though, and if they are near enough together a  $\frac{3}{4}$  inch bulkhead is sufficiently strong enough because the pressure of that coke would depend on the uprights that they were nailed to or fastened to.

The COURT.—Whether or not this was a sufficient bulkhead to keep the coke out it did keep it out, so aren't we taking up time in discussing this proposition? The only question is, was it enough to keep the sweat out? [92]

Mr. HENGSTLER.—The pressure of 1,000 tons of coke against that support would dislocate the sup-



(Testimony of W. F. Mills.)

port, would it not?

A. Not if there was sufficient support backing it up. You have to have uprights or stanchions of course for your bulkhead to come against. A vessel 40 to 44 feet beam with simply the regular stanchions that are in amidships is too long a span without any other uprights or stanchions.

Q. Captain, would this bulkhead that was described to you by Mr. Lillick be an air-tight bulkhead?

A. Well, it might be an air-tight bulkhead if it was built close to the decks and had matting against it. It is a question if it will keep air out. Air will usually get where water will.

Q. So far as the boards alone are concerned without the matting, will it be an air-tight bulkhead?

A. It ought to be, comparatively speaking, very near air-tight.

Q. If it had been constructed in the way that was described to you, will it probably be an air-tight bulkhead? A. It might possibly be.

Q. It might possibly be? A. Yes, sir.

Q. Would it be a sweat-tight bulkhead or would the sweat penetrate between the joints of the boards?

A. The sweat would swell the boards so that it would be much tighter caused by the sweat than if there was no sweat.

Q. If your vessel passes through the tropics there is a great deal of heat, is there not?

A. As a rule, yes.

Q. What is the effect of heat upon this kind of

(Testimony of W. F. Mills.)

bulkhead, where one board is put on top of another one?

A. The heat would tend to shrink the boards and the moisture would tend to swell them. [93]

Q. Heat would tend to shrink them?

A. Yes, sir.

Q. So it probably would have the effect of making openings between the joints, would it not?

A. It would, yes; of course, that would depend a great deal upon the thickness of the bulkhead. If it was a thin bulkhead it would have more cause to shrink and swell than it would if it was thick. On 3-inch timbers the heat and the moisture would have little effect on the swelling or shrinking.

Mr. LILLICK.—No further witnesses.

[**Testimony of Robert F. Pillsbury, for Libelant.**]

ROBERT F. PILLSBURY, called for the libelant, sworn.

Mr. HENGSTLER.—Q. Captain Pillsbury, what is your business?

A. Marine Surveyor and Surveyor of the Bureau Veritas, Registered.

Mr. HENGSTLER.—Mr. Lillick, is it admitted that Captain Pillsbury is an expert navigator and an expert on the stowage of cargoes, or shall I prove it?

Mr. LILLICK.—No, it will be admitted.

Mr. HENGSTLER.—Q. Captain Pillsbury, what connection had you with the British ship “Dolbardan Castle,” that arrived in this port in August, 1910?

A. At the request of Parrott & Company I made a

(Testimony of Robert F. Pillsbury.)

survey of the vessel at the time the hatches were taken off. I surveyed the cargo that day as far as possible, the upper tiers of cement; I examined the bulkhead or bulkheads separating the cement from the coke; and from time to time I examined the sheet iron, particularly in the hold and on the wharf for the purpose of determining the cause of damage to the cement and the sheet iron or plates. [94]

Q. What condition did you find the cement in, Captain?

A. I found practically the whole upper tier of cement caked. I first tried those under the hatch and as they all appeared to be caked I then took an instrument, either a piece of wood or a hammer, I don't remember which now, and crawled all over the upper tiers of cement and sounded most of the barrels, perhaps not all but enough to get a good idea as to their condition.

Q. And you say you found them caked?

A. I found all of the upper tier caked, all that I sounded, and I think I sounded two-thirds of them; they all rung, indicating that they were hard on the upper side or upper parts.

Q. How was that cement stowed with reference to the steel plates that you examined?

A. My recollection is that that space in the between-decks for general cargo, that space of the ship for general cargo was filled in the between-decks with cement, and some iron on the deck of the between-decks; and then in the lower hold—in the upper part there were several tiers of cement also.

(Testimony of Robert F. Pillsbury.)

Q. And the damaged barrels that you speak of were the upper tier of cement that was stowed in the between-decks?

A. Those are the ones I refer to. I could not swear to the others because I did not pay so much attention to the cement except on that first day.

Q. Did you examine that cement as it came out of the ship, or before it came out of the ship?

A. No, I examined it before it came out.

Q. Before it came out?      A. Yes. [95]

Q. Now, Captain, did you notice that there was coke in the fore and aft part of that ship?

A. I did.

Q. When you knew there was a damaged cargo, you had some idea that that coke had something to do with it, you started out with that idea, did you not, Captain?

A. I cannot say that I started out with it; I started out to find the cause of the damage, with an open mind. I try to have an open mind.

Q. Did the bulkheads have anything to do with the cause of the damage, in your opinion?

A. Well, I examined the bulkheads.

Q. In what condition did you find them?

A. I found the bulkheads to be built of ordinary boards, laid one on top of the other, rough boards. I could see spaces where air and moisture and daylight, if the other side were open, so that I could see through it; on top, under the deck, I put my hand in several places where the bulkhead did not fit closely up to the deck.

(Testimony of Robert F. Pillsbury.)

Q. You heard the testimony here with reference to damaged mats; did you notice any damaged mats on the bulkhead?

A. I saw a few damaged mats on every bulkhead; some of those were displaced.

Q. That is the usual case, is it not, that these mats are displaced and are lying all over the hold, after the cargo is discharged?

A. I am referring to before the cargo was discharged.

Q. They were displaced even before the cargo was discharged?

A. Yes. That is not always the case though.

Q. But that was the case in this instance?

A. That was the condition I found. [96]

Q. Would you say that that bulkhead was sweat-tight, Captain? A. No, sir.

Q. You are familiar with the nature of coke, are you not, Captain Pillsbury?

A. Reasonably so.

Mr. HENGSTLER.—I don't know that it is necessary to go into that. Is it admitted that coke is a great absorber of moisture and a great producer of sweat in a vessel, Mr. Lillick?

Mr. LILLICK.—You already have testimony about that. I would rather not make any admission. It depends entirely upon the coke and how it is treated; sometimes it arrives clear, with no moisture, and sometimes it is wet.

Mr. HENGSTLER.—Q. What is the quality or nature of coke with reference to producing sweat in



(Testimony of Robert F. Pillsbury.)

the hold of a ship when it is stowed in a vessel, Captain Pillsbury?

A. Many times it produces a very bad sweat, so many times that in my opinion it is dangerous to carry it in the compartment with dry cargo.

Q. So far as its quality is concerned you call it dangerous; so far as quantity of moisture is concerned, what is your opinion with reference to that?

A. It depends on a good many conditions; first, whether it is loaded dry or wet; and furthermore, to some extent, on the car that is given, the ventilation that is given, the facility for ventilation during the voyage.

Q. Do you know how it usually comes into the hold of ships at Rotterdam or Antwerp, Captain? Have you any experience in that line?

A. Not from my own knowledge; no, sir.

Q. Do you know from your own knowledge how it usually comes out of ships here in this port, with reference to containing moisture? [97]

Mr. LILLICK.—If your Honor please, we object to that inasmuch as the Captain does not know what the situation was in this particular sense; what the situation is otherwise is not at all material. We object to the question as immaterial, irrelevant and incompetent.

The COURT.—The objection is overruled.

A. Only from the effects on other cargo.

Mr. HENGSTLER.—Q. What is the usual effect on other cargo, Captain, within your experience as a marine surveyor of cargoes and as an expert?

(Testimony of Robert F. Pillsbury.)

A. In the most cases that have come under my observation there has been damage to other cargo stowed in the same ship with the coke caused by the sweating of the coke.

Q. How many ventilators were in the neighborhood of this damaged coke?

A. There was one ventilator that went down through the pump-well casing which terminated under the between-decks so that in this case it was practically of no value in ventilating that space.

Q. In your opinion, did that fact contribute to the damage produced in the cement?

A. I think it did.

Q. What is your opinion as to what produced that damage to the cement, Captain?

A. Well, I made a report at the time and I stated that in my opinion there were two causes; there appeared to me to have been a leak in the decks or at the aft part of the hatch, or around the mainmast and some salt water got down through the decks around the mast and contributed to the damage.

Q. What produced the greater part of the damage, Captain, in your opinion, and from your investigation? [98]

A. In my opinion the sweat from the coke produced the greater damage.

Q. From your investigation what would you say was the proportion of the damage caused by the sweat as it bears to the damage caused by a possible leak in the deck?

A. I have already estimated that and expressed

(Testimony of Robert F. Pillsbury.)

the opinion that it was two-thirds sweat and one-third salt-water damage.

Q. The salt water that you speak of, where did that come from?

A. That came from the leaks through the decks and abaft the hatch and around the mainmast.

Q. Could it have come from any other source, Captain?

A. No, I think not; I think that is the cause of it.

Q. Now, so far as the steel plates are concerned, you examined those, did you?     A. I did.

Q. How did you find them, Captain?

A. Well, I found a great many of them rusted and pitted; they were damaged principally by the pitting. I made some tests myself and the salt reaction on those that I tested was so very slight that I recommended a chemist more expert in such matters than myself to make an examination. I found very little evidence of salt water, in my opinion, very slight salt reaction; in some none at all.

Q. What was your conclusion from that with reference to the cause of the damage?

A. That it was caused by the sweat from the coke, carrying some chemical contained in the coke.

Q. When you examined the damage to the steel plates did you find it localized in particular spots or was it all over the plates?

A. Pretty much all over the plates; pretty much all over the plates and pretty much throughout the pile. [99]

Cross-examination.

Mr. LILLICK.—Q. Captain, you are usually

(Testimony of Robert F. Pillsbury.)

called to examine cargoes by reason of damage done to them, are you not? A. Yes, sir.

Q. And when you testified a few minutes ago that you had on many occasions examined vessels that had general cargo and coke, you were referring to cases where you had been called upon to go down and make examinations of damage?

A. That is right.

Q. It is a fact, is it not, Captain, and a fact of your own knowledge, that Meyer, Wilson & Co., Balfour, Guthrie & Co., and other shipping-houses here in San Francisco have for a great many years shipped coke into this port in vessels carrying general cargo as well? A. I think that is so.

Q. Is it not also true, Captain, that for a great many years coke has been carried with general cargoes in sailing vessels to this port without separate compartments?

A. Without separate air-tight compartments, yes, sir.

Q. And in testifying as you did a few moments ago on the questions asked you by Mr. Hengstler when you stated that the cargoes that you had examined, where damage had been shown, were cargoes where you had been called in to examine them by reason of certain damage that had been done to that cargo?

A. That is right.

Q. How many ventilators were there on this ship, do you remember?

A. There was a set of ventilators on the forward

(Testimony of Robert F. Pillsbury.)

end, also a set on the aft end and one central ventilator.

Q. That would be five?      A. I think so.

Q. It is also true, is it not, Captain, that this middle compartment where the cement and the steel plates were carried [100] had no division between the upper hold and the lower hold; in other words, that it was a clear hold without any between-decks?

A. Yes, sir. It was not laid between-decks.

Q. In other words, there was a free circulation of air between the upper hold and the lower hold, with the exception of where the cement was piled in the barrels?      A. Yes, sir.

Q. That ventilator you speak of in the main compartment was how large?

A. I don't remember the diameter of it.

Q. Do you remember looking to see whether there were any openings in that ventilator on the way down?

A. To the best of my recollection I did look but I found not. I am not absolutely positive about it.

Q. If the captain of the vessel testified there was an opening below on the upper deck and in between-decks you would not want to be understood as testifying positively that there was not, would you?

A. No, except that it is my impression that there was no ventilation in between-decks.

Q. It is not true, Captain, that the salt water that leaked into that vessel would in and of itself have caused sweat upon the vessel going down through the tropics and then after the water evaporated and



(Testimony of Robert F. Pillsbury.)

formed moisture and then again condensed going around the Horn where it was cold?

A. I don't think there was enough of it to come in to cause any considerable amount of sweating.

Q. Is it not true that would have been the result if there had been a quantity of salt water come down?

A. Well, "a quantity" is an indefinite term.

Q. Well, is it not true, Captain, that the water itself would have caused sweat?

A. Yes, but not so extensive as I found evidences of. [101]

Q. Did you examine the steel plates with reference to their ends and how the rust appeared upon the edges of the plates?

A. I examined them pretty thoroughly; yes, sir.

Q. Did you not find that the damage from the rust was confined pretty largely to the edge of the plates and then for a short distance in?

A. No, I found it very extensive throughout the plates.

Q. Did you notice the color of the rust?

A. Yes; I think it was a whitish color.

Q. A whitish color?      A. Yes, sir.

Q. What test did you make of it?

A. I made the ordinary salt-water test, nitrate of silver. I scraped these particles off and then I put them in distilled water and applied nitrate of silver. If I put them in ordinary water there would have been salt reaction from the ordinary fresh water drawn from a faucet.

Q. Captain, do you know whether sweat that arises

(Testimony of Robert F. Pillsbury.)

from coke carries with it chemical in solution, or ever carries with it chemical in solution such as sulphur?

A. You mean in my own knowledge?

Q. Yes.

A. I could only say as it is applied to steel in a ship. I know that ships that carry coke, whether the coke has actually come in contact or whether it is between-decks or on the under part of the deck it affects the paint; the paint comes off and the steel is corroded, unless it is well coated with paint. On a long voyage it will even then come off and start corrosion.

Q. But in a deposit made from sweat from coke have you ever known of sulphur or any other chemical deposit to be left? [102]

A. Well, I can draw that deduction from what I have seen.

Q. And then the example you have given us of the plates of a vessel, as to paint?

A. Yes. I have seen other steel that has been stowed right in with coke very badly eaten by it. I have had enough cases to say that my deduction could be that.

Q. That is where it came in direct contact with the coke? A. Yes.

Q. But in coming in contact with sweat arising from coke and then carried over by moisture and deposited on the plate?

A. Yes, I have seen a number of instances to draw that conclusion.

(Testimony of Robert F. Pillsbury.)

Q. You don't know, Captain, do you, that the cause of this rust upon the plates was the sweat, you are only assuming that, are you not?

A. That is my opinion.

Q. That is your personal opinion? A. Yes, sir.

Q. Captain, do you not know, as a matter of fact, that coke very often does arrive here in San Francisco in ships carrying general cargo and there is no damage?

A. Well, I don't know how to define the phrase very often; I said once before that in my experience as a marine surveyor there seems to be more cases where the general cargo comes damaged; so much so that very few of the merchants are now shipping general cargo with coke.

Q. Is it not a fact, Captain, that if coke were stowed in a vessel at Rotterdam dry as when it came from the ovens, and that the ship's decks did not leak throughout the voyage, and the ventilation were attended to, that cement might be stowed in the same hold with only the separation of a wooden bulkhead and six inches of air space between and come out undamaged from sweat in San Francisco? [103]

A. Only under very favorable conditions.

Q. What do you mean by under very favorable conditions?

A. I think I stated that before; very good ventilation and very well attended to.

Q. Do you remember when you made your examination of the vessel and the captain of the "Dol-

(Testimony of Robert F. Pillsbury.)

badarn Castle'' called your attention to a streak of water that apparently had run down the matting upon one of these bulkheads, and having a conversation with him as to whether that came from salt water?

A. No, I do not remember the conversation; it is possible there may have been one.

Q. Do you remember seeing a streak of water on that bulkhead coming down from the *the* mast?

A. A streak of water coming down from the main-mast?

Q. Coming down from about where the mast was and where the bulkhead ran up to the deck?

Mr. HENGSTLER.—Which bulkhead?

Mr. LILLICK.—I don't know whether it was the forward or the rear one.

A. The mast would not be near the bulkhead.

Q. Disregarding the mast, do you not remember seeing a streak of water that apparently had run down the mast?

The COURT.—When you speak of a streak of water do you mean the marks?

Mr. LILLICK.—Q. The marks of water and they found that water to be salt water by reason of tests subsequently made?

A. I stated there was evidence of salt water having come in at the aft part of the hatch.

Q. And there was a streak down the matting that evidenced a deposit of salt upon it?

A. I think there may have been. [104]

Q. Did you not have a conversation—now that

(Testimony of Robert F. Pillsbury.)

your recollection has been refreshed about it—with the captain and someone there tasted that matting?

A. I don't know that I had a conversation with the captain; it is possible I may have done so.

Q. But you do remember that that matting had a streak upon it? A. I think one mat was wet.

Q. Do you remember a test was made, someone tasted it and said it tasted like salt?

A. No, I don't remember that.

Q. How did the number of ventilators on the "Dolbadarn Castle" comply with the rule of the Bureau Veritas?

A. I think the number was about what was required.

Q. And as to construction also?

A. No, because the opening there, you are required to have it open amidships right under the main deck.

Q. Do you know what the "Dolbadarn Castle" is classed in? A. Lloyds' Register, I think.

Q. Are there not a great many more vessels classed in Lloyds' Register than in the Bureau Veritas?

A. Yes, many more.

Q. Are not the rules of Lloyds' Register accepted by insurance companies the world over?

Mr. HENGSTLER.—If your Honor please, I object to that as immaterial and irrelevant in every respect.

Mr. LILLICK.—Under the claims of the libelant, as I understand it, and it was so stated by Mr. Hengstler in the opening statements, there was no proper ventilation. It is upon that point that this is offered.



(Testimony of Robert F. Pillsbury.)

Mr. HENGSTLER.—Would it make it proper ventilation because the rule of one company or another company requires [105] certain minimum ventilation for any kind of merchandise, when there is a special kind of merchandise here that is particularly destructive?

Mr. LILLICK.—Lloyds' classification is not one company; it is a general classification recognized all over the world as being a proper classification. It has certain vessels registered with certain equipment. That is what I want from Captain Pillsbury.

Mr. HENGSTLER.—Mr. Lillick, supposing Lloyds' Register sanctions a ventilator that does not ventilate in between-decks at all, would you say that that settles it?

Mr. LILLICK.—It would not, but your own knowledge is that Lloyds' Register passes in its examination only vessels that have proper ventilators and have proper ventilation.

Mr. HENGSTLER.—That is not the general experience at all. It may be so or it may not be so. Custom has nothing to do with it.

Mr. LILLICK.—Q. Captain Pillsbury, how about that? A. Please repeat the question.

Q. Are vessels classed in Lloyds and passed upon in their examination considered properly equipped passed by them? A. Yes, sir.

Mr. HENGSTLER.—If properly passed by them, I suppose.

Mr. LILLICK.—Q. Is that true the world over, Captain? A. Yes, sir.

(Testimony of Robert F. Pillsbury.)

Q. It is recognized amongst insurance companies as well as amongst ship owners and cargo owners that a vessel that has passed inspection by Lloyds is for the purposes of the trade and for the purposes of issuing policies of insurance upon her proper?

A. Yes, sir. [106]

Q. Did you notice whether the deck of the "Dolbadarn Castle" had been caulked recently?

A. That I do not remember.

Q. She was a vessel of standard type, was she not, in the trade she was running in? A. Yes, sir.

Q. In your opinion she was a perfect seaworthy vessel, and there is no question about her general equipment? A. I think not.

Q. Is not coke one of the usual component parts of a general cargo shipped from Rotterdam and Antwerp? A. Well, I would say yes and no.

Q. You have to say yes and no to that?

A. Yes and no.

Q. What do you mean by that, Captain?

A. Well, if I said yes I would be saying something that I do not think proper; that is, I do not think it is the proper cargo.

Q. I asked you whether it was not a component part of most of the cargoes shipped from Rotterdam and Antwerp? A. I think not now.

Q. Was it in 1910?

A. Well, before 1910 it had been demonstrated to everybody connected with the business that it was a very dangerous thing to do.

Q. And yet no one had done anything about chang-

(Testimony of Robert F. Pillsbury.)

ing the method of carrying it, had they, Captain?

A. Yes, I think Mr. Bishop, as was testified, had taken it up.

Q. But that was not prior to 1910, was it, Captain?

A. Yes, I think it was.

Q. When was it, if you remember?

A. I do not remember but I think it would be 1909 anyway.

Q. Is it not a fact, Captain, that the "Dolbadarn Castle" was the first vessel in your experience that ever came into [107] San Francisco with a bulkhead of that character separating coke from general cargo?

A. No, I don't think so. I think the Frenchmen years ago had the ordinary wooden bulkheads.

Q. With matting?

A. The matting did not amount to anything.

Q. How long ago is that?

A. I saw the Frenchmen in the early part of 1900 with an ordinary wooden bulkhead as effective as that.

Q. But without any matting?

A. Well, I won't say that. I am inclined to believe they had sails on the aft part.

Q. Have you seen many of them, Captain?

A. I have seen quite a number, yes, sir.

Q. I mean at that time, in 1900.

A. Not 1900, in the early part of 1900. I came ashore in 1903. In those first years there was a great deal of trouble with those Frenchmen from various causes and I saw quite a good many of them.

(Testimony of Robert F. Pillsbury.)

Q. With the ventilators open was there not very little likelihood of damage from sweat?

A. No; a ventilator in one part of a compartment will not take care of the sweat.

Q. And yet she was a vessel of usual standard type, with ventilators used for the purpose of the trade she was in—you say that was her usual trade?

A. Yes.

Q. And those under ordinary circumstances would have been proper equipment for that vessel, would they not?

A. That was the equipment that she had doubtless.

Q. And for a cargo of coke stowed in wet or dry that would have been a proper equipment for that vessel, would it not, Captain?

A. Not with the experience that I have had, I would not say so.

Q. Which experience are you speaking of now, Captain, prior to 1910 or subsequently to 1910?

A. Yes, prior to 1910. [108]

Q. How would you attend to ventilating a vessel of that type?

A. In the first place, I would not put the coke in with the general cargo; I would not at that time. If I had done so I would have taken great care of the bulkheads and I would have provided suitable ventilation.

Q. How would you have provided other ventilation?

A. I would have provided ventilation on each end

(Testimony of Robert F. Pillsbury.)

of that compartment, of the general cargo compartment.

Q. Reaching the deck how?

A. Well, I would put a ventilator in the fore end of the general cargo compartment and one in the aft end.

Q. That would have meant reconstructing the vessel, would it not?

A. Well, that is not a very expensive thing to do.

Q. In the event of heavy weather how would you keep them open, Captain?

A. I would not keep them open in very heavy weather. I would put canvas covers on them.

Q. Captain, in your opinion, was the manner of stowage on the "Dolbadarn Castle" such as would have been approved in 1910 by a stevedore or master of ordinary skill and judgment knowing the voyage to be made and the weather and the conditions the vessel was likely to encounter on the way from Rotterdam to San Francisco?

A. I do not think I can answer that. My own opinion is I would not do it.

Q. I am speaking about the judgment of a stevedore or master of ordinary skill.

A. In my frame of mind I do not see how I can answer that question.

Q. You are rather leaning the other way, are you not, Captain?

Mr. HENGSTLER.—He would rather be on the careful side. [109]

Mr. LILLICK.—That is the captain's reputation,



(Testimony of Robert F. Pillsbury.)

and it is a good one. That is all.

Redirect Examination.

Mr. HENGSTLER.—Q. If there were not any separate air-tight bulkheads in connection with this cargo, would you call it good stowage? A. No.

Q. Captain, you have had the experience that a vessel has passed inspection by Lloyds, have you not, and nevertheless she was not seaworthy?

A. Well, that happens with all classifications; sometimes we fall down.

Q. What do you say as to matting being added here as a protection; what kind of a protection, if any, is that?

A. I do not think it is any protection.

Q. You do not think it amounts to anything, do you? A. No, sir.

Q. Is it not a fact that matting would probably only collect the more and contribute to it?

A. Well, I think it has rather a negative effect.

Recross-examination.

Mr. LILLICK.—Q. As I understand it, you would consider carrying general cargo and coke in the same vessel bad stowage anyway?

A. In the light of my experience, yes, Mr. Lillick, on that voyage.

**[Testimony of Franklin Riffle, for Libelant.]**

FRANKLIN RIFFLE, called for the libelant, sworn.

Mr. HENGSTLER.—Q. Mr. Riffle, what is your business?

A. I am department manager in a wholesale hardware house, in charge of the iron and steel department of the Dunham, Carrigan & Hayden Company.  
[110]

Q. Was that your business in 1910? A. It was.

Q. Do you recollect the consignment of steel plates or sheets received by you in August or September, 1910, ex ship “Dolbadarn Castle”? A. Yes, sir.

Q. With reference to those steel plates what was their nature so far as contact with outside substances or materials is concerned?

A. You refer to the condition of the plates when they arrived?

Q. You have had a good deal of experience with steel plates, have you not? A. Yes, sir.

Q. How long have you had experience with them?

A. Or, for a great many years. I have been connected with Dunham, Carrigan & Hayden Company as manager of that department for 13 years and I had had some experience prior to that as a civil engineer, a structural engineer.

Q. With that class of material?

A. With that class of material.

Q. Are they very susceptible to outside influence, things that come in contact with them?

A. Yes.

(Testimony of Franklin Riddle.)

Q. Why?

A. There are certain agencies that corrode steel by attacking the impurities in the steel, such as sulphur and phosphorus, forming chemical combinations which result in rust.

Q. What kind of rust do they result in?

A. It is what they call an iron oxide, disintegration of the steel forming an oxide of iron.

Q. With reference to the steel that came out of this ship and that you received, in what condition did it arrive?

A. Many of the plates were very badly corroded. The corrosion in some instances taking the form of a very thick incrustation [111] and in others a very light coating of rust; in nearly every instance the plates were pitted more or less as the result of this rust.

Q. Does the rust in itself impair the quality of the plates so that they become unmerchantable?

A. No. If there is no corrosion, if there is no pitting; fresh-water rust, for instance, does not injure plates.

Q. What makes them damaged, or injured, or unmerchantable?

A. The eating into the plate, forming pits or grooves.

Q. Did you examine the condition of these particular plates at the time?      A. I did.

Q. What was that condition?

A. As I stated before, many of the plates were very badly corroded, covered with a coating of rust,

(Testimony of Franklin Riffle.)

and in some instances quite light, and a pale yellow color, and in other instances very thick and a dark color, almost black. In some instances I should say the rust was a quarter of an inch thick.

Q. What did you do with the plates?

A. We rejected those that were damaged.

Q. By damaged do you mean rusty?

A. I mean pitted.

The COURT.—Are you undertaking to show the cause of this or are you undertaking to show the extent of it?

Mr. HENGSTLER.—Both, your Honor.

The COURT.—The extent is not material here if this matter is to be referred to a Commissioner to ascertain the damages.

Mr. HENGSTLER.—It has something to do with the cause of it because the difference between rust and pitting is material.

The COURT.—He has testified it was pitted. If you will ascertain the cause of it we will make much better progress. [112]

Mr. HENGSTLER.—Q. If they had simply been slightly rusted, Mr. Riffle, would you have rejected them?

A. No. We accepted all the plates that were not pitted or damaged in any way after removing the rust, scraping it off. If we found the plates were not pitted we accepted them; in other words, we did not reject all the plates, a considerable portion of them.

Q. Where did you find those pits when you examined them in the rejected plates?

(Testimony of Franklin Riffle.)

A. In all parts of the plates; sometimes in one part and sometimes in another part, depending where the rust was.

Q. Were the pits confined to the edges or to the corners, or all over?

A. All over the plate; in the center as well as the sides and the edges.

Q. You have had experience with plates, have you not, that you knew to have been damaged by salt water?

A. Yes, we frequently have had plates damaged in that way.

Q. What conclusion did you come to with reference to the damage to these particular plates if you compared them with previous damage you had seen and that you knew to be damaged by salt water?

A. Well, I did not come to any conclusion for the reason that I did not know what the cause was. There was evidently some corrosive agency at work there but what it was I could not say.

Q. What showed to you the difference?

A. The principal difference that I noticed was that many of the plates had a much thicker incrustation than is usually the case with plates that we had brought around the Horn from New York, or by way of Panama and had been subjected to the action of salt water. That was about the only difference that I noticed. It seemed to me that the incrustation was rather [113] unusual in some instances, not in all instances.



(Testimony of Franklin Riffle.)

Cross-examination.

Mr. LILLICK.—Q. Were you the gentleman with whom Mr. Stewart talked when he went down to look at the plates? A. Is Mr. Stewart a chemist?

Q. He was a chemist down there.

A. I remember talking with a chemist who came down to get some samples of the rust.

Q. Were you here when Mr. Stewart testified a little while ago—earlier to-day?

A. No, I think not; at least I did not recognize any of the witnesses except Captain Pillsbury.

Q. You did not express any opinion to these gentlemen that the rust was from salt?

A. No, I think not, although I might have done so. We made the nitrate of silver test and there was evidently some salt present, though not in the proportion that we had been accustomed to find it in plates shipped via Panama. In other words, the reaction was very slight. It was some time after applying the nitrate of silver before there was any white color. It usually follows very quickly.

Q. How long had they been lying in your warehouse after delivery?

A. You mean before we rejected them?

Q. No, before the test was made?

A. I could not say, probably but a very few days. We rejected them promptly upon receipt.

Q. They were delivered to you by wagon from the ship to your place? A. Yes, by truck.

Q. And that was in September, 1910?

A. I believe so, yes, sir.

(Testimony of Bernard Hilding.)

Q. Do you remember whether it rained any during that week?

A. No, I do not; I don't remember that. [114]

[**Testimony of Bernard Hilding, for Libellant.**]

BERNARD HILDING, called for the libellant, sworn.

Mr. HENGSTLER—Q. Mr. Hilding, what is your business? A. I am in the importing business.

Q. What was your business in August, 1910?

A. I was in the importing department of Parrott & Company.

Q. Of the libellant in this case? A. Yes, sir.

Q. What connection did you have with the discharge, if any, of the "Dolbadarn Castle" in August, 1910?

A. Upon arrival of the ship I went to the dock and asked Captain Pillsbury to ascertain if there was any damage done to the cargo and if the ship was properly stowed.

Q. Was that within the scope of your business in Parrott & Company's firm? A. Yes, sir.

Q. You did that with every ship that arrived, you looked into the condition of the cargo?

A. Yes, sir, and I arranged for the discharging of the ship.

Q. Did you see the cargo yourself when it arrived?

A. Yes, sir.

Q. With reference to the cement, did you see that?

A. Yes, sir.

Q. Do you know where it was stowed?

(Testimony of Bernard Hilding.)

A. Yes, sir.

Q. And the steel plates, do you know where they were stowed? A. Yes, sir, I know.

Q. How were they stowed with reference to each other?

A. The cement was in amidships, below the hatch, and right through; then a small parcel of iron—

The COURT.—Just a moment. Here is a diagram showing the stowage; do you desire to contradict this?

Mr. HENGSTLER.—No, your Honor. [115]

The COURT.—Very well. It has been introduced in evidence and it shows the stowage, does it not?

Mr. HENGSTLER.—Yes, it is a rough sketch of it and it is substantially correct.

The COURT.—That seems to conform to the idea of the witnesses testifying heretofore.

Mr. HENGSTLER.—If it is admitted that the stowage was that way I will not go into that at all. The steel plates were below the cement.

Q. You noticed, did you not, that this general cargo was divided from the coke, which was in the forward and aft part of this vessel, by a bulkhead?

A. Yes, sir.

Q. Did you examine the bulkhead yourself?

A. I saw the bulkhead and I noticed that the boards in some places were not tight, so that in some places you could put your finger through. Furthermore, on top, right below the deck, there was a space probably in some places 3, 4 or 5 inches.

Q. Between the deck and the bulkhead?

(Testimony of Bernard Hilding.)

A. Between the deck and the bulkhead.

Q. What would you say with reference to its general condition as to tightness?

A. I would not consider it air-tight and I would think that moisture would come through freely, through a bulkhead as it was in that shape.

Q. Did you see any dunnage mats there?

A. I saw some; yes, sir.

Q. Where were they?

A. Some were found lying in the ship amongst the barrels of cement and some on the inside of the bulkhead.

Q. From the condition in which you saw them do you think they were instrumental in keeping out of that general cargo [116] compartment sweat or air or vapors?

A. I would not call those mats a lining of the bulkhead simply because it was not lined one next to the other; in some places they fell off.

Q. When you saw these mats, did they cover the whole bulkhead?

A. They did not. There were places where no mats were at all.

Q. You were here this afternoon when Captain Wilson was on the stand and described the double bulkhead, were you not? A. Yes, sir.

Q. Have you ever seen such a bulkhead in any vessel?

A. Yes, I have. In March, 1911—I am not sure of the date—there was a French sailing vessel consigned to us which had a bulkhead consisting of 2-

(Testimony of Bernard Hilding.)

inch boards; below those boards was old sacks; below that there was tar paper and again sacks, and then steel under it. In the same way it was separated on the side, and all around was coke. I know that the steel which was discharged there came out absolutely as clean as it had left the mill.

Q. You have had experience, have you not, with the stowing of coke in vessels, so far as having seen coke stowed in vessels is concerned? A. Yes, sir.

Q. And have you seen it discharged?

A. Yes, sir.

Q. What is your experience with coke?

A. My experience with coke is that it generally produces moisture, sweat—in the ship. If the general cargo is not properly separated it will result in damage to this cargo. I have seen coke which was as high as 10 per cent in moisture; I have particularly noticed that coke shipped during the winter season will generally show more moisture than coke shipped during the summer season.

Q. Why is that?

A. Because it has not got the chance to dry [117] out when leaving the coke-ovens up to the time of shipment.

Q. What is the action of coke-sweat upon cement, if you know?

A. Any kind of moisture coming in contact with cement will cake the cement.

Q. Would that apply to vapors of fresh water?

A. Fresh water, yes.

Q. Would it apply to vapors of salt water?



(Testimony of Bernard Hilding.)

A. Well, I am not a chemist but I should judge that vapors of salt water would act hardly different from fresh water because the salt would not evaporate; the vapor would be practically the same as soft water.

Q. It would apply to any vapor or to any sweat, it would damage the cement? A. Yes, sir.

Q. Do you know the action of coke on steel plate? Have you had any experience with that in the course of your employment in connection with vessels?

A. I have had some experience with steel plates, especially in this particular ship; I have had experience with sweat through coke on steel other than plates in many instances.

Q. What was the effect of the neighborhood of coke on steel, other than steel plates?

A. The steel which is subject to sweat caused through coke becomes rusty.

Q. Has that rust anything to do with the neighborhood of the coke?

A. The rust will be caused through the sweat of the coke, through the moisture.

Q. I believe you testified that this cement was caked that came out of the "Dolbadarn Castle"?

A. Yes, sir.

Q. What was the condition of the steel plates as they came out; did you see them?

A. Yes, sir, I saw them come out. I was in attendance on the ship every day. Some of the plates [118] were very rusty, covered with a thick rust, others again with a little yellow rust.

(Testimony of Bernard Hilding.)

Q. How was the rust distributed on the plates themselves?

A. The rust was all over, in practically all the plates, all the damaged plates.

Q. Did you notice which ones of the barrels of cement were damaged? Did you take any particular notice of that?

A. I could not say exactly which barrels of cement were damaged; I know that the first lot that came out of the ship was damaged, and I know that in the course of the sale many people—many buyers—objected to this particular cement as being damaged; as a matter of fact, one large buyer absolutely refused to take any of this cement at all because he claimed it was caked and damaged.

Cross-examination.

Mr. LILLICK.—Q. How old are you, Mr. Hilding?

A. Thirty-one and a half years old.

Q. When did you come to San Francisco?

A. I came in 1907.

Q. How long have you been working for Parrott & Company?

A. Since 1907, until February, 1913.

Q. Where were you employed before that?

A. I was in Mexico.

Q. Was your first experience with vessels that which you obtained here in San Francisco?

A. Yes, sir.

Q. How many vessels have you consigned to Parrott & Company that you personally saw that carried coke and general cargo?

(Testimony of Bernard Hilding.)

A. I should say offhand 7 or 8.

Q. How many before the "Dolbadarn Castle"?

A. The "Dolbadarn Castle" was the first sailing vessel, and we had one steamer before that.

Q. What day did you notice that the bulkhead did not come [119] within the span of your hand, as you seemed to indicate it, from the top of the deck?

A. Right on the very same day that I went down to the ship.

Q. Were the hatches off?

A. Yes, the hatches were off.

Q. Was any of the cement out of the vessel yet?

A. Not when I saw it first.

Q. How did you get down there?

A. I went down in the regular way; there was a ladder a few steps down; I went down and told Captain Pillsbury at the time to inspect the ship altogether.

Q. None of the cargo was out at all? A. No.

Q. How much room was there between the upper tier of cement and the deck? A. Very little.

Q. How much?

A. Well, I should say two or three feet roughly speaking.

Q. How did you examine the vessel, by candles, or by lamps, or what? A. Well, the hatches were off.

Q. Any preparation made at all other than taking the hatches off, to discharge the cargo? A. No.

Q. How did you get down below?

A. I did not go down below. I just was saying

(Testimony of Bernard Hilding.)

that the bulkhead below the deck showed that it was not tight.

Q. Is it not a fact you noticed that after the first tier of cement was out instead of at the first time you went down to the vessel?

A. To the best of my recollection no cargo had been discharged when I came down with Captain Pillsbury.

Q. And you noticed that the first time you went down there?      A. Yes.

Q. In your examination of Mr. Hengstler I think you said you [120] had only had two vessels to your knowledge with coke and general cargo; am I mistaken about that?

A. That I had only what?

Q. That you had only two vessels with coke and general cargo?

A. No; I answered the question to you.

Q. What was it you said to Mr. Hengstler about have two vessels with coke?

A. Mr. Hengstler asked me if I had seen coke and general cargo in a ship where a proper bulkhead was built and I said I have seen one ship.

Q. What bulkheads were there on these 7 or 8 other vessels that you have had experience with?

A. When I said 7 or 8 other vessels, that included steamers also. Now, as to sailing vessels, there were perhaps four.

Q. What were the names of them?

A. The "Dolbadarn Castle" was one of them. The "Bidart" was another; and the "Sully"; I do

(Testimony of Bernard Hilding.)

not remember now whether there were 3 or 4.

Q. What kind of bulkheads did those four or did those three vessels have?

A. I know that the "Bidart" carried largely pebbles and coke, and on account of these bulkheads not being air-tight the stacks containing the pebbles were broken and the pebbles were practically loose and they all had to be re-sacked, for which the ship at the time paid.

Q. What kind of a bulkhead was there on her?

A. The boards were put side by side in a similar way as the "Dolbadarn Castle."

Q. What year was that in?

A. That was in 1911 I should judge, but I am not sure about that.

Q. What kind of a bulkhead did the other vessels have—for instance, the "Sully"?

A. The "Sully" had the bulkhead [121] which I just described to Mr. Hengstler, with 2-inch boards. The steel was stowed in the bottom of the ship, with 2-inch boards separating the coke from the steel, and below that two layers of tar paper and sacks.

Q. In what year was that?

A. That was approximately a year later than the "Dolbadarn Castle."

Q. In 1911 or 1912?      A. I think so.

Q. Those three vessels then are the only three sailing vessels you have had any experience with?

A. No, I may say that I have been on board of other sailing vessels.

Q. When?



(Testimony of Bernard Hilding.)

A. During the period of my employment with Parrott & Company.

Q. Carrying coke and general cargo?

A. Yes, sir.

Q. What vessels were they?

A. I have been on board the "Bourbaki."

Q. To examine the cargo?

A. Not to examine the cargo. We have several parcels of merchandise on those ships, the ships were not consigned to us; I went to inspect those and I found there was no damage to our cargo.

Q. They carried coke? A. Yes, sir.

Q. And that is true of all the other vessels you have mentioned except the "Sully," the "Bidart" and the "Dolbadarn Castle," there was no damage on these other vessels? A. Except the "Bidart."

Q. Is it not a fact, Mr. Hilding, that when you went down to go over the "Dolbadarn Castle," and after you had gone over her cargo, you believed that that damage upon the plates was caused by niter?

A. No, that is not a fact; I did not at any time believe so.

Q. Are you acquainted with Mr. Bishop and Mr. Wright? [122] A. Yes, sir.

Q. Do you remember any conversation with Mr. Bishop about the previous cargo of this vessel?

A. Yes, sir, I do remember that.

Q. Do you remember now that you did speak to him about the previous cargo of the vessel being niter?

A. I had found out that the ship had carried niter

(Testimony of Bernard Hilding.)

and I wanted to find out if the rust could have come from salt or other causes owing to the ship not having been properly cleaned from the niter cargo.

Q. And you believed at that time that the damage was from salt, did you not?

A. No, I did not; if I had believed it was from salt it would not have been necessary to send a chemist to analyze it.

Q. Was there any mention made at all of sweat during the time that you were discussing this with Mr. Bishop? A. I do not remember that now.

Q. Mr. Hilding, this is your signature, is it not, upon this letter (handing)? A. Yes, sir.

Mr. LILLICK.—We just offer this in evidence, if your Honor please. I will not take the time to read it.

(The document was here marked “Claimant’s Exhibit No. 1.”)

Q. Now, going back to this question of niter, Mr. Hilding, are you clear in your mind about the situation with respect to examining that cargo for traces of niter?

A. Yes, sir. I have asked the chemist—I asked the chemist at the time to go down and inspect those plates, telling him also that niter had been in that ship, according to reports received by us, previous to this voyage.

Q. You did not think about the sweat at that time,—nothing was said about it?

A. I did not know the cause of the damage. [123]

Q. It never occurred to you that it was sweat?

(Testimony of Bernard Hilding.)

A. At that time?

Q. Yes.

A. At that time when I asked the chemist to go down we did not know what the cause of the damage was.

Q. What caused your inspection of this bulkhead then?

A. I had instructions from the firm and it was part of my duty whenever a ship came in to see that everything was in order, and generally I would employ a surveyor, especially when the cargo consisted of coke and general merchandise, and have the surveyor examine the vessel in order to know if there was any damage to the cargo, or not, and if the cargo was properly stowed, on account of several cases of damaged coke which came to my knowledge previous to this case of the "Dolbadarn Castle."

Q. I understood there were no other cases prior to the "Dolbadarn Castle" that you had any knowledge of?

A. Personally I had not but we had reports.

Q. You did not say anything to Mr. Bishop about sweat, did you, or make any remarks about sweat at the time?

A. I have already answered that I asked the surveyor to inspect this particular cargo, and I asked the chemist. Personally, I am not a chemist and I cannot say if the damage was sweat or anything else.

Q. What I am getting at is this: You did not think about sweat as the cause of that damage when you went down there that day, did you?

A. I did see the bulkhead and I have testified as to

(Testimony of Bernard Hilding.)

the condition of the bulkhead, all prior to the discharge.

Q. Will you just answer my question? Answer it yes or no. [124]

A. When I went down that day I did not know whether there was any damage, or not; how could I expect there was sweat?

Mr. LILLICK.—Q. You did examine it with Captain Pillsbury, did you not? A. Yes, sir.

Q. And you found that the top tier of cement was caked, did you not? A. Yes, sir.

Q. Did you think at that time that that caking was caused by sweat? A. I didn't know.

Redirect Examination.

Mr. HENGSTLER.—Q. Mr. Hilding, in this letter that has been introduced in evidence it is stated as follows—it is signed by Parrott & Company, apparently by yourself as Secretary:

“As indicated to you verbally a part of the cement delivered ex this vessel and a larger part of steel plates arrived in a damaged condition owing to improper stowage and poor ventilation; the damage done to the cement does not amount to a great deal and we therefore are inclined to waive any claim against the ship; the damaged plates however amount to”—and so on; was that letter written before or after the damage to the cement was ascertained?

A. At the time when this letter was written we only knew of a small portion of it, about 50 barrels of cement.

Q. Do you know whether a larger quantity of ce-

(Testimony of Bernard Hilding.)

ment was discovered later or not?

A. Yes, sir. We had one portion of 130 barrels of cement rejected by one buyer as all being caked. All through the sale of cement we had several complaints.

Q. Was that after the date of this letter?

A. It was after, as the cement was sold from the warehouse.

(An adjournment was here taken until to-morrow, Wednesday, November 19, 1913, at 9 A. M.) [125]

Wednesday, November 19, 1913.

[Testimony of Fred G. Wilson, for Libelant.]

FRED G. WILSON, called for the libelant, sworn.

Mr. HENGSTLER.—Q. What is your business, Captain Wilson?

A. I am vice-president of the Pacific Stevedoring & Ballasting Company, stevedores.

Q. What was your business in August and September, 1910? A. In the stevedore business.

Q. How long have you been in the stevedore business, Captain? A. 33 years.

Q. In this port all the time?

A. Always since I gave up going to sea, 33 years ago.

Q. You have had 33 years' experience in loading and discharging vessels? A. Yes.

Q. Do you remember the "Dolbadarn Castle," a British ship that came to this port in 1910?

A. I discharged her.

Q. Do you remember the barrels of cement that



(Testimony of Fred G. Wilson.)

were discharged from her?      A. I do.

Q. When did you first see her?

A. On the day she docked on the south side of Howard street wharf.

Q. Before the hatches were off?

A. I was down in the hold as soon as they took the hatches off.

Q. What did you observe when you went down in the hold, Captain, with reference to these cement barrels?

A. I observed that by testing the riding tier of the cement that it was hard, and I reported the same to the captain.

Q. Did you at that time make an examination of the bulkheads that were separating the general merchandise from the coke?

A. Well, I saw that there were crevices in the bulkhead and [126] that the coke was in close proximity to the bulkhead.

Q. Do you remember what kind of a bulkhead it was, about what kind of boards they were?

A. Well, it might be  $\frac{3}{4}$  of an inch or inch boards; I could not swear to that.

Q. But you say you saw crevices through the boards?

A. I saw that the bulkhead was not what we stevedores call a water-tight bulkhead.

Q. It was not a water-tight bulkhead?

A. No; that is, as far as I could see of it, what was in sight at the time.

Q. When you noticed that the cement barrels were

(Testimony of Fred G. Wilson.)

damaged did you associate that with the rest of the cargo at all?

A. I called the attention of the captain to it.

Q. You called the captain's attention to it. Did you associate it with stowage at all in any way?

Mr. LILLICK.—If your Honor please, I think that is calling for a conclusion of the witness, did you associate this?

The COURT.—Yes.

Mr. HENGSTLER.—Q. Did you come to any conclusion as to what was the cause of the damage to the cement as far as the appearances went?

A. The natural sequence of the stevedore would be a supposition it came from the sweat of the coke.

The COURT.—Q. Is that the conclusion you came to?

A. The conclusion I came to it was caused by the sweat that rises from the coke.

Mr. HENGSTLER.—Q. Have you seen many and discharged many vessels that carried coke in their hold?

A. Of course; I have discharged, I suppose 70 or 75% of the coke vessels that have been here in the last 20 years.

Q. What is the custom with reference to the bulkheads, presence or absence of bulkheads, when the vessel carries coke along with [127] general merchandise?

A. They generally have the bulkhead—the bulkhead is either clapboarded or in many cases they have, I have seen, used paper, where they have a

(Testimony of Fred G. Wilson.)

very perishable cargo, that would be damaged by the sweat.

Q. Was that the custom before 1910, or how far back can you say it has been the custom?

A. That has been the custom, I should say, well, about 1900 I think it was first started, Grace & Company used to be large importers and used to bring steel and other perishable cargo; they had the bulkheads in many cases lined with oil paper, common black oil paper.

Mr. HENGSTLER.—That is all.

Cross-examination.

Mr. LILLICK.—Q. Captain Wilson, have you ever unloaded any cargoes for Meyer Wilson & Company?

A. Have I?

Q. Yes. A. About 70 per cent of them.

Q. They are very large importers of cement and coke in this port, are they not? A. Yes.

Q. They very frequently have vessels arrive and have had vessels with coke and cement both in them, have they not? A. Yes.

Q. Have you not frequently discharged cargo from vessels consigned to them with not only coke and cement in them, where there has been no bulkhead between the cement and the coke?

A. I have seen vessels come to Meyer Wilson & Company without bulkheads and correspondingly the cement was damaged.

Q. Have you never had a cargo come in without the cement damaged, when coke has been with it?

A. Yes, there have been some vessels come here

(Testimony of Fred G. Wilson.)

that the cargo was not damaged, but that was when the coke was shipped in the summer time. The German syndicate coke, when it is put into the ships dry, when it comes out of the oven and comes from the quarry or where they manufacture the coke, and [128] it comes through on the cars and they don't have any rain; but when a vessel is loaded in the month of March or April in Rotterdam or other points on the European coast where they have to bring the coke in open cars, why, frequently even if it is dry when it comes out of the oven, it gets wet from the rain.

Q. Isn't it a fact, however, that the probability of the coke sweating depends almost entirely on whether the coke is wet when it is put in the vessel?

A. If the coke is dry when it is put in the vessel, why there is a possibility, if the vessel is properly ventilated that there would not be any sweat.

Q. You knew Captain Baxter, did you not, the captain of the "Dolbardan Castle"?

A. I discharged the "Dolbardan Castle" when Captain Baxter was in here the voyage before, when she had another name; the ship was here formerly, two years before, under another name, and then she was sold to her present owners.

Q. What is your opinion or what was your opinion of Captain Baxter as a competent navigator?

A. Captain Baxter was a very able shipmaster.

Q. Would you say that Captain Baxter was also an able shipmaster as to his knowledge of stowing and stowage?

(Testimony of Fred G. Wilson.)

Mr. HENGSTLER.—I object to that, I don't think it is competent.

Mr. LILLICK.—If your Honor please, this witness is an expert and knew Mr. Baxter, and one of the vital points in this case is whether or not Captain Baxter was a competent shipmaster and whether or not he exercised proper care in stowing this cargo.

Mr. HENGSTLER.—Q. Have you ever seen him stow a vessel, Captain?

A. I don't know whether I am right in making these remarks. You take the majority of English ships where they have an overlooker [129] when the ship gets into port, the captain goes on his holiday, and the superintending of the loading is done by the overlooker, the ship's husband, and the captain in many cases leaves the ship when she arrives in port and goes to his family and comes back when the ship is loaded or the loading nearly completed.

Mr. LILLICK.—I ask that that remark be stricken out of the record.

The COURT.—Let that go out. It does not seem to me material whether he considered the captain was a competent loader, but did he load this vessel competently.

Mr. LILLICK.—And whether he loaded this vessel competently, I am going a step further than that. Captain Wilson, knowing Captain Baxter as he did, will be in a position to say whether or not Captain Wilson's inference as to this sweat as he stated upon his direct examination was the result of the coke—

The COURT.—(Intg.) That is to say, you are



(Testimony of Fred G. Wilson.)

going to prove the competency of one witness by another witness instead of by the man himself. The objection will be sustained.

Mr. LILLICK.—I don't know as I am getting exactly to the point your Honor has in mind, but it is this, but to make the point exactly, what I want to find out from Captain Wilson if I can is, that as Captain Baxter said this vessel was properly stowed, he was there when she was stowed, and that her hatches were opened when she was coming around the Horn. I want to find out from him whether it was sweat or not; I propose to take a chance asking Captain Wilson now because he knew Captain Baxter very well and knew he was a competent master. I have known Captain Wilson for a great many years, met him 10 or 15 years ago, and I have confidence in Captain Wilson, and I propose to ask Captain Wilson, with his knowledge of the "Dolbardan Castle" if Captain Baxter testified [130] as he did that he opened these hatches on the way around in good weather, that he never saw any evidences of sweat, and he took care of his cargo, whether in Captain Wilson's opinion that would not have been a sufficient offset to his inference that he drew when he went down into the cargo, where at that time there was no evidence of sweat, only the result of some moisture, that Captain Baxter was in a better position to judge whether this cement was damaged by sweat.

The COURT.—I understand. That is a matter for the Court and not for witness; that is the trouble

(Testimony of Fred G. Wilson.)

about that. The objection will be sustained.

Mr. LILLICK.—Q. Did you have a conversation with Captain Baxter about this cement or coke at the time?

A. I cannot remember the conversation I had with Captain Baxter, but I called his attention to the fact that I presumed that the damage to the riding tier of cement was caused by sweat from the coke; that is the natural sequence that would generally have happened in a cargo of cement, where, if the vessel sweats, it drops off the beams and iron deck of the vessel on to the cement.

Q. Captain, when you came to that conclusion, drew that inference as you say you did, did you have in mind the fact that the vessel had not only gone through severe storms but also had her seams opened and that had allowed salt water to go down into the hold?

A. That is a matter, Mr. Lillick, for the surveyor who looked after the vessel to test. You can test it, whether it is salt water or fresh water.

Q. I am asking you whether, and it is only this point I want from you, when you drew that inference about the cement you had in mind or had your attention called to the fact that the vessel had gone through heavy weather, and that was another explanation for the [131] damage, that is, that sea water had entered the hold.

A. To the best of my memory I did not know that that vessel came through—she might have, but I never knew—that she came through any worse than

(Testimony of Fred G. Wilson.)

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A. To the best of my memory I did not know that that vessel came through—she might have, but I never knew—that she came through any worse than

(Testimony of Fred G. Wilson.)

the ordinary weather we usually get off Cape Horn; the vessel was in good condition when she arrived here, and the stowage of the cargo was fine. The only thing that I remember is that I told the captain that the riding tier of the cement was damaged; and the sweat on the iron hoops was also perceptible, to be seen.

Q. Now, Captain, if as a matter of fact—I am only assuming this—if as a matter of fact the vessel had gone through heavy weather and through some means, salt water, ocean water had gone down into that hold, and run across the beams and leaked on those barrels, that would also have been an explanation for the rust on the hoops, would it not?

A. Yes, if the vessel had had very heavy weather and the decks leaked, that could be caused, of course. That is a matter that can be determined by the surveyor by taking this acid test, telling the difference between salt and fresh water.

Q. Captain, from your experience of cargoes that you have discharged here have you ever known of a vessel with steel sides, hull and a wooden deck, to have in it a water-tight, and by water-tight I mean air-tight compartment between coke and cement and steel plates, and general cargo?

A. Water-tight bulkheads?

Q. Yes.

A. I have known them as I say bulkheads to be put up paper lined, with oil paper, where they were carrying perishable cargo in close proximity with the coke.



(Testimony of Fred G. Wilson.)

Q. Isn't it true that in going around the Horn you meet with such weather that a compartment of that character would never be air-tight, the straining of the vessel would open that so that it could not be water-tight?

A. Well, a vessel, you [132] know, might have good weather; I have been around the Horn four or five times with very fine weather and again I have come around there sometimes with very bad weather.

Q. Now, Captain, would it be possible going through a storm down there to have a water-tight compartment—could there be a water-tight compartment in the vessel and it remain water-tight?

A. Well, in one of these steel vessels with the hull moving so much it might be possible, of course, for a bulkhead to break down, especially if it was not properly put up.

Q. Even beyond breaking down, would not the pitching and straining of the vessel absolutely make it impossible to have an air-tight compartment unless it was a part and parcel of the ship like a steel bulkhead in a vessel?

A. Yes, you might if she had extraordinary weather.

Q. What is your opinion about the "Dolbardan Castle" as she was then with respect to ventilators?

A. To what?

Q. Did you deem her ventilation proper?

A. Well, now, if I am to say about the ventilation, what ventilation she had, the only way that ship

(Testimony of Fred G. Wilson.)

could be properly ventilated would be in fine weather to take her hatches off, and undoubtedly those entries would be made in the log-book.

Q. If that be a fact you would consider that proper ventilation? If the log shows that her hatches were taken off in fine weather, you would consider she was properly ventilated?

A. I would consider if a man took off his hatches in fine weather in the Atlantic and again in the Pacific that he was doing all he could to protect the cargo from sweat.

Q. Now, assuming that the “Dolbarden Castle” had two ventilators in her forward hold, two in her after hold, and one amidships, with the accessory of the open hatches, what is your opinion [133] as to her ventilation?

A. She was well ventilated.

Mr. HENGSTLER.—I object to that. That would depend very much on the dimensions of the ventilators. In the first place his ventilators might be ridiculous, if the dimensions are small. The description is not sufficient to enable the witness to come to any conclusion on that.

Mr. LILLICK.—Captain Wilson from his experience in this port and from his experience from unloading and discharging vessels of the type of the “Dolbarden Castle” is able to speak with absolute certainty as to these ventilators because as I understand it from my own limited experience with these vessels—I will ask him this question:

Q. Are not these vessels of the type and size of

(Testimony of Fred G. Wilson.)

the "Dolbardan Castle" equipped usually with the same character of ventilators?

A. Well, to the best of my belief these vessels are not properly ventilated for carrying large cargoes of coke and cement and perishable iron; that is to the best of my belief. I mean for that class of vessel. The "Dolbardan Castle" was one of these unwieldy barks there that carry a very large cargo and as a rule a majority of sailing vessels do not have sufficient ventilation.

Q. Is that not something that is passed upon by Lloyds and the Bureau Veritas?

Mr. HENGSTLER.—If you know.

A. Well, I don't know whether that is usually passed upon. We generally calculate that the hatches have ample ventilating power for taking care of it in fine weather.

Mr. LILLICK.—Q. Don't all vessels going through the Tropics have a certain amount of sweat?

A. More or less; they have a certain amount.

[134]

Q. And if sweat permeated the cargo it would permeate the whole of the cargo would it not? It would not be confined to one particular locality?

A. Well, if a vessel, sweats, naturally the fumes rise from the coke, it would naturally be on the riding tier, or it might be down to the second tier.

Q. Am I right about sweat being moisture suspended in the atmosphere after it had evaporated, and then like a vapor?

(Testimony of Fred G. Wilson.)

A. It might permeate through the cargo, yes. It might do it.

Redirect Examination.

Mr. HENGSTLER.—Q. Captain, have you had experience as a navigator, have you ever been in command of vessels? Your business is that of stevedore, isn't it?

A. Yes. I have a certificate to take command of a vessel.

Mr. LILLICK.—I might ask the captain about this log-book, Mr. Hengstler.

Mr. HENGSTLER.—I do not mind if you ask any questions from him as to that.

Mr. LILLICK.—There is one point about the log-book: There are some different pages in this log-book which I propose to read into the record, and upon these pages appear, as upon this page I happen to have in my hand, two different kinds of ink. I want to be able to argue to your Honor, if any question is made about them, and I don't think there will be—

The COURT.—(Intg.) Can't you find out?

Mr. LILLICK.—It is in regard to the different ink used in it. The explanation of it is, the mate writes up the log and takes it to the master to countersign, and the captain goes over it with him, and if the captain sees something that he knows ought to be added, he says he didn't put down so and so and it is put down with the ink there. [135]

Mr. HENGSTLER.—The mate writes it with the other ink.

Mr. LILLICK.—Yes. In other words, that entry

(Testimony of G. Loken.)

in ink is really the entry of the mate at the dictation of the captain.

Mr. HENGSTLER.—I think probably that is a reasonable explanation. I have no desire to attack the log on that account.

**[Testimony of G. Loken, for Libelant.]**

G. LOKEN, called for the libelant, sworn.

Mr. HENGSTLER.—Q. Mr. Loken, what is your business?

A. Manager of Henry Lund & Company.

Q. How long have you been in that business?

A. About 17 or 18 years.

Q. In the course of your business during the last 17 years it has been your function, has it not, to attend to the discharge of vessels that were consigned to your firm?

A. It has been under my supervision; yes.

Q. In accordance with that experience have you seen or observed vessels which arrived with cargoes of coke in connection with cargoes of general merchandise? A. Yes.

Q. In how many instances, generally speaking, as far as you remember?

A. Well, it would be hundreds of instances, I should say roughly.

Q. But you are familiar with coke cargoes, are you, Mr. Loken? A. Yes.

Q. Now, what is the nature of the coke cargo distinguishing it from other cargoes?

A. Coke cargoes have a certain amount of



(Testimony of G. Loken.)

moisture, and as a rule, generally speaking, it is very apt to damage other cargo in the course of long voyages.

Q. It would make a difference, would it not, as to whether the coke together with the general merchandise is carried in a steamer or [136] whether it is carried in a sailing vessel?

A. Very much; yes.

Q. Why?

A. A steamer is better ventilated than a sailer.

Q. Is there any other reason besides ventilation?

A. Shorter voyage.

Q. What is the average voyage of a steamer from Rotterdam to San Francisco?

A. 65 to 70 days for a steamer and 140 to 150 days for a sailer.

Q. Now, what effect has the moisture or has coke upon the rest of the cargo in the ship?

Mr. LILLICK.—If your Honor please, this is as to coke generally; we have already had testimony which has not been disputed and will not be disputed that coke carries some moisture. That has already been testified to.

Mr. HENGSTLER.—Will you admit that it carries usually an extraordinary amount of moisture?

Mr. LILLICK.—No.

Mr. HENGSTLER.—That is what I want to bring out here, that of course there is always a certain amount of sweat in every vessel, but what I want to show with this witness is that coke carries an extra-

(Testimony of G. Loken.)

ordinary amount of moisture.

Q. What with reference to the quantity of moisture in a vessel is expected when the vessel carries a coke cargo?

A. From our experience we find that the average coke cargo from the Continent arriving here will have from 6 to 8 per cent moisture.

Q. That is the average coke?

A. That is on an average.

Q. What allowance is made to the trade for moisture in coke, Mr. Loken, generally, if there is a rule about it in the trade?

A. There are some purchasers stipulate for a maximum amount, a maximum percentage of moisture in coke; that is amongst the larger purchasers; the smaller purchasers do not stipulate for any [137] percentage of moisture.

Q. Is there any usual percentage that is stipulated, Mr. Loken?

A. The largest buyers stipulate for a maximum of 3 per cent.

Q. He will accept it if it has only 3 per cent of moisture?

A. Three per cent is an allowance made for the excess.

Q. You have seen coke stowed in vessels, frequently, have you not in connection with other cargo? A. Yes.

Q. Now, what is necessary in order to protect other cargo from coke in a vessel, Mr. Loken?

Mr. LILLICK.—That is Mr. Loken's opinion.

(Testimony of G. Loken.)

Mr. HENGSTLER.—Certainly.

A. From experience.

Q. Based upon his experience of 17 years in observing hundreds of vessels that carried coke cargoes.

A. In my experience the only safe way to carry coke in a sailing vessel or in a steamer would be by bulkheading off the coke from the other cargo by good boards, battening it, and tar paper.

Q. If the boards are merely placed one placed upon the other, rough boards, without any battens would you consider that to be a proper bulkhead for the purpose of protecting general cargo from coke cargo?

A. I would not consider it a proper bulkhead if I wanted to be absolutely sure of the outcome of the cargo.

Q. You would expect with that kind of bulkhead the cargo would be damaged, would you not?

A. I would not say I would expect it to be damaged, but I would not want to take the risk that it would turn out in good order and condition.

Q. Mr. Loken, you have had experience in coke cargoes prior to 1910, have you not?      A. Yes.

Q. What has been the custom with reference to protecting a general cargo from coke cargo prior to 1910, properly protect it?

A. The custom, that was left very much up to the vessel, to [138] protect their own vessel, but in certain instances where we knew we had iron and steel which attract moisture, and very susceptible to attracting moisture, why we gave special instruc-

(Testimony of G. Loken.)

tions in the loading of the vessel.

Q. Prior to 1910? A. Yes.

Q. How many instances, numerous instances, or how many?

A. Offhand, I should say numerous instances.

Cross-examination.

Mr. LILLICK.—Q. How many vessels during the time you have been with Henry Lund & Company have you seen consigned to Henry Lund & Company with steel and cement, coke and cement?

A. Well, I cannot come down to exact figures.

Q. Approximately?

A. I should say on an average of from about 8 to 10 steamers and sailers.

Q. How does the business of Henry Lund & Company as to consignments of coke and general cargo compare to that of Meyer Wilson & Company?

A. Well, I could not say for Meyer Wilson & Company, I am not attending to their business.

Q. But for Henry Lund & Company they have 8 to 10 vessels a year, are you prepared to say that?

A. That is roughly speaking.

Q. Is there any difference between a steamer and a sailing vessel with reference to the cargo hold, the bulkheads? A. Yes.

Q. How many sailing vessels during the time you mention have you had consigned to Henry Lund & Company that you have personally seen that had coke and cement?

A. As regards cement, we never dealt in cement very much, only occasionally.

(Testimony of G. Loken.)

Q. Coke and general cargo?

A. Coke and general cargo, I could not say off hand. I could get the records since the fire.

Q. Approximately, how many?

A. I have not the figures right at hand. [139]

Q. You said a few moments ago you had from 8 to 10 vessels a year, sailers and steamers?

A. That is approximately the number that we have coming to us with cargoes.

Q. Now, approximately what number of the 8 or 10 are sailers and what number steamers?

A. Well, I can give you, for instance, I can tell you what we have had this season.

Q. I am asking you over this period in which you say you have had 8 to 10 vessels a year approximately, if you can tell approximately how many of those were sailing vessels and how many steamers.

A. I should say about half and half.

Q. Half and half. How many of those vessels, of the sailing vessels, have you ever seen with a bulk-head such as you say should be put between coke and general cargo?

A. I have seen very few of them.

Q. Have you seen any?

A. No, I don't think I have.

Q. From the testimony that you gave a little while ago on your direct examination that the percentage of moisture in coke was 6 or 8 per cent, do you know that of your own knowledge? A. Yes.

Q. Have you tested it?

A. I have not tested it as a chemist; we have had



(Testimony of G. Loken.)

chemists test it for us.

Q. You are only speaking of what other men told you?

A. No; at my request the chemists have tested our cargoes of coke.

Q. That is upon what you base your testimony?

A. Yes.

Q. That there is 6 or 8 per cent of moisture?

A. Yes.

Q. In the coke?      A. Yes.

Mr. LILLICK.—I move that that go out, if your Honor please.

The COURT.—Let it go out. The chemist is just as competent to tell us as to tell him.

Mr. HENGSTLER.—But, if your Honor please, if we are called upon to call the chemist in this particular instance to prove what is clearly the fact—  
[140]

The COURT.—(Intg.) I understand; it is not competent. The objection is that it is hearsay—a chemist told him. What the chemist told him he could tell us, subject to cross-examination.

Mr. LILLICK.—Q. Mr. Loken, is it not a fact that steamers are better ventilated than sailing vessels?

A. Yes.

Q. You said that?      A. Yes.

Q. Then there is a difference between the steamer cargoes as to coke and general cargo and the sailing vessels?

A. Steamers, as a rule, turn out a better cargo than sailers.

(Testimony of G. Loken.)

Q. Why is a steamer better ventilated than a sailing vessel, upon what do you base that conclusion?

A. A steamer is constructed with more ventilators in my opinion.

Q. How many ventilators were there on the "Dolbardan Castle"?

A. I was not down at the "Dolbardan Castle."

Q. Are you a man who is acquainted with vessels as to construction?      A. No.

Q. You know practically nothing except what the ordinary man knows about a vessel and its construction?

A. Only as coming in contact with the shipping trade.

Q. That is what you base your conclusion upon as to ventilation?

A. Yes, and experience about general cargoes.

Redirect Examination.

Mr. HENGSTLER.—Q. Mr. Loken, how many of the vessels have you examined for Henry Lund & Company that brought to this port cargoes of coke and steel?

A. Well, as I say, I am not prepared to go into exact figures, but quite a number of them.

Q. But your cargoes are usually coke in connection with steel, are they not, and not coke in connection with cement?      A. Coke and steel generally.

Q. You do not import cement to any extent?

A. Oh, yes, we did, [141] prior to the fire and a little after the fire.

(Testimony of G. Loken.)

Q. But ordinarily you import coke and steel?

A. Coke and steel.

Q. Now, you say you never saw the kind of a bulkhead that you have described in answer to my question, what kind of a bulkhead would protect general cargo from *come*. Have you any explanation to make of that?

A. What you consider in my opinion would be a proper bulkhead.

The COURT.—You have given us that.

Mr. HENGSTLER.—You gave your opinion as to what would be a proper bulkhead.

A. Yes, I gave that.

Q. You said in answer to Mr. Lillick's question you had never seen that kind of a bulkhead; did you mean that?

A. No, I have never seen that exactly, that kind of a bulkhead.

Q. Have you seen bulkheads where the boards were battened between coke and general merchandise? A. Yes, I have seen that.

Q. Have you seen bulkheads where the boards were put one on top of the other and tar paper over them?

A. Yes, I have seen the cases where they have been tar papered and boards one on top of the other.

Q. Now, Mr. Loken, you have had experience, have you not, in the sale of these cokes that are consigned to your firm, Henry Lund & Company? A. Yes.

Q. For 17 years?

A. That is the length of my shipping experience.

(Testimony of G. Loken.)

As far as my experience in sales of coke go back, they go back to about 1900.

Q. You are familiar with the nature of coke through this experience, are you not?     A. Yes.

Q. Through selling coke to your buyers?

A. Yes. [142]

Q. And you have done that since 1900-frequently, have you not?     A. Yes.

Q. Can you testify that in all instances there is an allowance made for the moisture in the coke to large buyers?

A. Well, an allowance in moisture, that is only practically of recent date; it only goes back a few years; prior thereto there was no allowance for moisture made.

Q. But at the present day there is an allowance for moisture?     A. To the larger buyers.

Recross-examination.

Mr. LILLICK.—Q. Will you name that vessel, Mr. Loken, where you have seen battens on the bulk-heads, a sailing vessel?

A. The “R. C. Rickmers.”

Q. When?

A. I cannot tell you the exact date she was in port, but the vessel is very clear in my mind. I think it was in 1907 or 1908.

Q. Consigned to Henry Lund & Company?

A. Yes, consigned to Henry Lund & Company.

Q. What was her cargo?

A. Consisted mostly of iron and steel and coke.

(Testimony of G. Loken.)

Q. What was the name of the vessel that you saw the bulkhead made of boards and oil paper?

A. That was the "R. C. Rickmers."

Q. Did she also have these battens on the bulkheads?

A. Well, I don't know what you mean by battens exactly on the bulkhead.

Q. I understood that you testified to Mr. Hengstler that the bulkheads had battens on. Didn't you know what was meant by that when you answered his question?

A. What I meant by the battens was where the boards were battened, and the tar paper on the inside. [143]

Mr. LILLICK.—With Mr. Hengstler's permission, your Honor, I would like to put on a witness for our side out of order.

The COURT.—Very well.

[Testimony of H. L. E. Meyer, Jr., for Respondent.]

H. L. E. MEYER, Jr., called for the respondent, sworn.

Mr. LILLICK.—Q. Mr. Meyer, what is your business? A. Shipping and commission business.

Q. You are a member of the firm of Meyer Wilson & Company? A. Yes.

Q. How long has the firm and how long have you been receiving cargoes from sailing vessels loaded with coke and general cargo?

A. How long has the firm?

Q. Yes.



(Testimony of H. L. E. Meyer, Jr.)

A. You refer to the present copartnership of the firm of Meyer Wilson & Company.

Q. The firm of Meyer Wilson & Company.

A. Since 1881.

Q. Do you know in a general way how the business of Meyer Wilson & Company with reference to coke and the quantity of it compares with the business of all the other houses in San Francisco?     A. Yes.

Q. How does it compare?

A. I think we do about as much as all the others do, probably a little more.

Q. Mr. Meyer, what has been your experience as to vessels, sailing vessels, arriving with coke and steel plates, with reference to the presence of sweat?

A. We have had ships arrive with coke and steel plates that were all in good order and condition, and we have had other vessels arrive where the plates were damaged.

Q. What has been the usual custom of the trade with reference to carrying coke and general cargo in combination in sailing vessels as to bulkheads and methods of building bulkheads?     [144]

A. It has been the usual custom where the general cargo was subject to damage to build bulkheads on the ship.

Q. Of what type?     A. Wooden bulkheads.

Q. With anything over the bulkhead or simply a wooden bulkhead?

A. Sometimes with mats over them on the inside.

Q. Have you ever heard of a case where these bulkheads have been made air-tight or water-tight?

(Testimony of H. L. E. Meyer, Jr.)

A. No, sir.

Q. You would notice it, would you not, if any cargo came here in that way?

A. Yes, I only wish they were water and air-tight sometimes.

Q. Have you ever heard of a case where a vessel came to San Francisco carrying such a cargo with oil paper over these bulkheads? A. No.

Q. In the cargoes consigned to Meyer Wilson & Company have you ever had steel plates and the coke in immediate proximity to each other? A. Yes.

Q. In what condition did that come in? Tell the Court from your experience what the situation is with respect to that.

A. Well, we have had some cargoes come in, as I said before, if the coke was dry and no water got into the ship, where the steel was in perfect condition when discharged here. We have had other cases where there might have been some leaks, were some leaks through the deck, where the water would go through the coke and settle on the plates, salt water, and the coke would be frozen to the steel and pit the steel very badly; we have had some very serious cases of that kind. If the coke when shipped is dry, unless water comes in contact with it, my experience has been that there is no damage to the steel from the coke. We have in fact in a good many ships found that ship owners in vessels where [145] there was not a laid between-decks had used our steel beams for making a deck and then put the coke on top of the beams without any separation whatsoever, and the

(Testimony of H. L. E. Meyer, Jr.)

ships have escaped in practically every instance all damage. I can only think of one case where there was a little damage owing to the fact that water had entered, and leaked on the coke and through the coke on to the steel.

Q. As I understand it, that is the case where the coke is piled upon the steel plates?

A. Right upon the steel.

Q. What has been the experience of Meyer Wilson & Company as to making an allowance for moisture to buyers for their coke?

A. You mean in coke sales?

Q. Yes, in coke sales.

A. I think we made one contract or possibly two contracts in our experience which had what we call a moisture clause in them; the only concern who buy or endeavor to buy with the moisture clause here is the Selby Smelting and Lead Company, and I have two cargoes of coke in port now for them, which we sold them without any moisture clause because we did not care to sell with that clause.

Q. Do you know whether any ships have arrived in port to-day? A. Yes.

Q. With coke and steel?

A. One of my ships arrived to-day and two yesterday.

Q. Do you know how that coke was stowed with reference to general cargo of the vessel?

A. It was stowed with the ordinary type of bulk-heads.

(Testimony of H. L. E. Meyer, Jr.)

Q. With the ordinary bulkheads, wooden bulkheads?

A. As a rule.

Q. Mr. Meyer, have you ever had any sailing vessels consigned to you where there have been cargo compartments where coke has been piled in the forward hold and in the after hold and general cargo amidships, whether steel plates, cement or anything of that character, where there have been no bulkheads between the coke and general cargo? [146]

A. Yes, where there have been cement amidships and coke.

Q. General cargoes; I simply mention cement as one.

A. We have had the ships arrive here without any bulkheads whatsoever.

Q. Have you ever had those arrive with no damage done?

A. Yes, even without damage, but also in some cases damaged. We have had cargoes where the coke,—take, for instance, coke and cement stowed next to one another, with simply mats laid over the end of the cement barrels, and we have had other cargoes with chalk stone and cliff stone, which contains a great deal of moisture with the cement stowed right up against it.

Q. Isn't it a fact that since you have mentioned chalk and cliff stone, that that is invariably put into the vessel in a damp condition, sometimes perfectly saturated with water?

A. It is shipped, as a rule, soaking wet.

(Testimony of H. L. E. Meyer, Jr.)

Q. And chalk stone is really a more dangerous cargo than coke, if you consider coke dangerous?

A. Yes, considerably so. Unless the coke is ringing wet in the ship owing to rainy weather, or something of that kind.

Cross-examination.

Mr. HENGSTLER.—Q. Mr. Meyer, you say the bulkheads between coke and general cargo that arrive in your vessels are not generally air-tight?

A. Yes.

Q. They are sometimes air-tight, are they not?

A. No, I have never known of a bulkhead in any sailing vessel to be air-tight, except the bulkhead happens to be a water-ballast tank, that the ship is one of those water-ballast ships that has tanks in the middle of it, that might be air-tight.

Q. But they are air-tight, and they would also be sweat-tight, would they not?

A. No, I think they sweat more than any other; [147] the sweat in these ballast tanks is a great deal more than any other place in the ship; that has been our experience.

Q. They sweat through the sides of the tank?

A. They sweat inside.

Q. But do they sweat outside?

A. The ship sweats outside too, naturally, outside of the tank.

Q. You say you wished they did have some air-tight and sweat-tight bulkheads in vessels which carried coke with general merchandise. That is your



(Testimony of H. L. E. Meyer, Jr.)

idea, is it? You wished they did. Why do you wish so?

A. Because it would do away with the chances of possible damage.

Q. You have collected a good many claims for damages, haven't you, for damages to general merchandise that was created just by this very cause of coke sweat?

A. Well, we have collected some, but under certain conditions only. I think I compromised a case with you, Doctor, on a vessel on which there was something similar, only the conditions were such that you decided to pay me rather than to go to court.

Q. But as a matter of fact, in your large experience you have had quite a number of claims for damage to general merchandise that came in these coke ships, haven't you?

A. Oh, yes. It has generally been because of the coke having been wet when shipped.

Q. Isn't it a fact that almost all the coke cargoes that arrive here arrive wet?

A. Not what I would call wet. There is more or less sweat with all coke cargoes; but we do not find that ordinary sweat makes the damage.

Q. What you mean by that is the ordinary coke sweat? A. The ordinary coke sweat.

Q. You know, however, that the ordinary coke sweat is an extraordinary amount of sweat as compared with other cargoes, don't you? [148]

A. With some classes of cargo.

Q. With most classes of cargo?

(Testimony of H. L. E. Meyer, Jr.)

A. With dry, perishable cargo, yes. We class cargoes like chalk stone and cliff stone and sand, in the same class, category; in fact, they are worse in my opinion than coke.

Q. There are some cargoes which are in the same category and they are all recognized to be dangerous cargoes to be loaded in ships, aren't they? They require special care? A. Naturally.

Q. When you say that you have received here steel that was stowed in connection with coke, directly in contact with it, and it was undamaged, cement and steel plates?

A. Steel beams; there might have been plates also.

Q. Steel beams are a very different thing from steel plates.

A. I think they are as liable to be damaged as steel plates or pretty nearly so.

Q. Are you sure about that? Steel plates are used for what purposes commercially, Mr. Meyer?

A. I guess they are used for various purposes.

Q. What purposes usually?

A. Making boilers and things.

Q. Supposing that a plate is to be used in a boiler and let us say that it is  $\frac{3}{4}$  of an inch thick, if it is pitted to the depth of  $\frac{1}{8}$  of an inch it is useless for a boiler, is it not? A. I assume so.

Q. Because that is the weakest part of the boiler, the whole boiler is  $\frac{1}{8}$  of an inch thick in that case?

A. Yes, that is right.

Q. Do you know if a steel beam is pitted to the

(Testimony of H. L. E. Meyer, Jr.)

depth of  $\frac{1}{8}$  of an inch that don't make any difference? A. No.

Q. It is just as good as it would be without that?

A. No, I would not agree with you. If the steel beam were pitted to the depth of  $\frac{1}{8}$  of an inch it would be rejected. Such has [149] been my experience, ordinarily speaking, the buyers would not take it.

Q. Still a steel beam is not rejected as quick as a steel plate on account of rust?

A. No, I don't think so.

Q. Now, you spoke of the moisture clause. That moisture clause is very generally in contracts?

A. No, sir. The only people who I know of who insist upon the moisture clause are Selbys, or who try to insist upon it, but we sold them probably more coke than anybody else without the moisture clause than with the moisture clause.

Q. Do you sell to Selbys?

A. The Selby Smelting & Lead Company.

Q. Is your contract—

A. (Intg.) We have no moisture clause. I have two ships in port for them now.

Q. You say usually in their contract they have a moisture clause?

A. They endeavor to buy on the basis with a moisture guarantee in it.

Q. You simply sell to them without the moisture clause and take that into consideration in the price, don't you? A. Naturally.

Q. They are the largest importers of coke in this

(Testimony of H. L. E. Meyer, Jr.)

neighborhood?     A. Not by any means.

Q. Isn't most of your business done with Selbys, most of your coke business?     A. No.

Q. They are very large importers, are they not?

A. Not compared to some of our other customers; they are very small importers.

Q. Now, in those ships which arrived to-day and yesterday, what are their names, Mr. Meyer?

A. One is the "La Rochjauquilan" and the other the "La Rochefoucauld" with coke and steel on board.

Q. When did she arrive?

A. The "La Rochjauquilan" arrived yesterday and the "La Rochefoucauld" this morning. [150]

Q. Have you seen the "La Rochjauquilan"?

A. No.

Q. You don't know what condition her cargo is in, do you?     A. No.

Q. What did she carry?

A. She carried coke, and steel and general cargo and sand.

Q. And as far as you know the steel may all be ruined in her?

A. I know nothing as to the condition of the steel.

Q. As far as the "La Rochefoucauld" is concerned, what is her cargo?

A. Steel, coke, sand and general cargo; she has a similar cargo on board.

Q. Have you looked at her stowage?

A. Well, she is going to Selbys about noon to-day.

(Testimony of H. L. E. Meyer, Jr.)

Redirect Examination.

Mr. LILLICK.—Q. What approximately is the percentage of the vessels in which you have had coke and general cargo consigned to you in which you have made claims for damage compared to those in which you have not made claims for damage?

A. That would be a very hard matter to answer.

The COURT.—A very hard matter, and not at all enlightening.

The COURT.—I will continue this until to-morrow morning at 9 o'clock.

(An adjournment was here taken until to-morrow, Thursday, November 20, 1913, at 9 A. M.) [151]

Thursday, November 20th, 1913.

[Testimony of P. W. Tompkins, for Libelant.]

P. W. TOMPKINS, called for the libelant, sworn.

Mr. HENGSTLER.—Q. What is your business?

A. Industrial Chemist.

Q. How long have you been engaged in that business? A. 17 years, about 17 years.

Q. Have you familiarized yourself in that business with the nature of coke, and particularly the action of coke in relation to steel plates and cement and merchandise which may be affected by the neighborhood of coke in the hold of ships?

A. Yes, sir, in a general way. Your question is rather broad. I am quite familiar with the character of coke and its influences, yes, sir.

Q. What is the character of coke with reference to absorbing and giving out moisture and gases?

A. They are very extensive; the surface being so



(Testimony of P. W. Tompkins.)

extensive and on account of its porous condition it enables it to absorb and give off very freely; it always contains a certain amount of moisture owing to the coking process itself.

Q. What do you mean by the coking process?

A. When the coke is made all the volatile substances are driven off, and at the time that that is completed the coking process is stopped by cleansing with water.

Mr. LILLICK.—Q. Just let me ask a question here: Have you ever seen coke prepared?

A. Yes, sir, I have.

Q. And you know how it is prepared, do you?

A. Oh, yes.

Mr. HENGSTLER.—Q. You say that in the process of manufacturing coke water is used and poured on the coke?      A. Yes.

Q. In addition to the water are there any gases or chemical [152] substances absorbed by the coke that may react upon merchandise in the neighborhood of the coke?

A. There are some gases absorbed by the water; it has such a broad surface, principally carbon dioxide from the air and also oxygen from the air.

Q. That carbon dioxide and oxygen is absorbed in the coke along with the moisture, is it?

A. Yes, sir.

Q. If that coke is afterwards subjected to heat, what is the effect of the heat upon it?

A. Well, part of the gases involved up to the point of saturation at the temperature with which it is

(Testimony of P. W. Tompkins.)

given off are absorbed; the lower the temperature the more the absorption up to a certain point, and the higher the temperature the less it can absorb up to a certain point, up to the point of boiling water, and then it does not absorb any at all.

Q. With reference to the carbon dioxide that you testify to being absorbed by coke, what is the action of that carbon dioxide upon objects like steel plates?

A. Corrosion in conjunction with water.

Q. Did you, in August or September, 1910, examine the cement that came out of the hold of the British ship "Dolbadarn Castle"?

A. I examined the cement; I do not recall the date, though.

Mr. LILLICK.—Q. Do you know that that cement came out of the hold of the "Dolbadarn Castle"?

A. Do I know?

Q. Yes, do you know?

A. Of my own first knowledge, no, I do not.

Q. Where did you examine it?

A. In some warehouse down near Battery and Greenwich streets. I do not recall exactly the name of the warehouse. [153]

Q. Do you know how long it was after the vessel arrived in port?

A. That I do not know; I would have to refer to my report to know the exact date.

Q. Have you your report? I have no objection to your referring to it. A. No, I have not.

Mr. HENGSTLER.—Q. Is this your report, Mr. Tompkins? (Handing.)

(Testimony of P. W. Tompkins.)

A. Yes, sir, this is the report.

Q. What is the date of that report?

A. September 7, 1910.

Mr. LILLICK.—I would like to ask the witness one or two questions at this point.

Q. How many other barrels of cement were there in this lot that you examined?

A. I would not venture to say because it is so long ago.

Q. It was in a warehouse, was it?

A. Yes, sir, it was in a warehouse.

Q. Now you are speaking of the cement, are you?

A. Yes.

Q. Did someone tell you that the cement was the cement that came from the "Dolbadarn Castle"?

A. They say it was deposited there, it was at this warehouse and it had a certain mark.

Q. Do you know who told you that?

A. No, I do not recall.

Q. Where were the plates that you examined?

A. At the Dunham, Carrigan & Hayden warehouse.

Q. Was that upon the same day that you examined the cement?

A. I am not sure of that; I do not see that it refers to it here as being the same date, or not.

Q. Were there many other steel plates in that warehouse?

A. There may have been; I paid no attention other than to the ones I was drawn there to inspect.

Mr. LILLICK.—Mr. Hengstler, so far as you are

(Testimony of P. W. Tompkins.)

concerned [154] and so far as your client is concerned I do not want to put you to that proof, but there is this possibility, that someone down at these warehouses had a purpose in view to have Mr. Tompkins examine something else that came off the "Dolbadarn Castle"; what do you know about the situation yourself, Mr. Hengstler?

Mr. HENGSTLER.—I think I can prove by Mr. Bishop that he saw the chemist's report and that he knows that Mr. Tompkins examined both the cement and the steel plates that came from this ship.

Mr. LILLICK.—And yet no one can tell unless there was some special mark on them.

Mr. HENGSTLER.—Q. Mr. Tompkins, what was the mark on the cement?

A. Inspected at the Santa Fe Warehouse.

Q. Who requested you to make the investigation at the time?

A. It must have been Parrott & Company.

Q. Was anyone present when you inspected these goods?

A. I am of the opinion there was, but I am not clear on the point; I believe there was, but I am not sure.

Q. Do you remember who was present?

A. No, sir, I do not.

Q. Or who pointed them out to you?

A. No, sir, I do not.

Mr. HENGSTLER.—I will have to call other witnesses to prove that, your Honor.

Mr. LILLICK.—I do not want you to do that.

(Testimony of P. W. Tompkins.)

Let me see whether we cannot agree that Mr. Tompkins may testify he examined certain steel plates that he was told were plates that came from the "Dolbadarn Castle" and that he examined certain cement that he was told was cement that came from the "Dolbadarn Castle," [155] you could not prove it, I take it, because the cement undoubtedly was delivered to the warehouse by truck and your people did not follow it from one place to another.

Mr. HENGSTLER.—He was told by Parrott & Company, or by a representative of Parrott & Company—that these steel plates and that this cement came from the "Dolbadarn Castle."

Mr. LILLICK.—That he was told it came from the "Dolbadarn Castle," yes. I object to the witness' testimony, if your Honor please, upon the ground that the witness cannot testify that that was the plates or the cement that came from the "Dolbadarn Castle."

The COURT.—Of course that would require the bringing of somebody to make this connection.

Mr. HENGSTLER.—I will have to call somebody from the warehouse who knows about it. I thought that that was admitted. I thought all of you gentlemen had seen Mr. Tompkins' report.

Mr. LILLICK.—I have a copy of it. Upon the face of it, it simply shows that he was taken to this warehouse at least two weeks or perhaps a month after the vessel arrived and was told, here are the steel plates that came from the "Dolbadarn Castle"—he was told that at one warehouse, and he was



(Testimony of P. W. Tompkins.)

told at the other warehouse that here are the barrels of cement that came from the "Dolbadarn Castle," but that is all he knows about it.

Mr. HENGSTLER.—He was told that by a representative of Parrott & Company, and the report was accepted by you—

Mr. LILLICK.—Not by me. The report was sent to my people.

Mr. HENGSTLER.—You never before doubted that this was a report on these very goods, did you?  
[156]

Mr. LILLICK.—No, I have not, and I have no doubt now but I think I ought to object to this testimony; I dislike to make it, but I think I ought to make the objection.

Mr. HENGSTLER.—I do not like to spin out this trial unnecessarily.

The COURT.—Do I understand you to state that you have no doubt but that these were the plates?

Mr. LILLICK.—No, I have not any doubt about it.

The COURT.—Then the Court will not have any doubt about it.

Mr. LILLICK.—Then let it go at that, your Honor.

The COURT.—Very well, proceed.

Mr. HENGSTLER.—Q. Mr. Tompkins, have you refreshed your memory from this report about the condition of these goods at the time?

A. Yes, sir, I think I have.

Q. What was the result of your examination of the cement?

A. That they were unmistakably not salt water

(Testimony of P. W. Tompkins.)

damaged; that they had been damaged by water of some kind.

The COURT.—Q. Do I understand you to say it was not by salt-water damage?

A. It was not by salt-water damage.

Mr. HENGSTLER.—Q. You examined the steel plates; will you kindly tell the court the result of your investigation of the damage to the steel plates?

A. The plates were chosen for the extent of the damage, and the entire surface of this plate washed and the water washes and the distilled water subjected to the characteristic clothing test which is the indirect determination of salt; in one instance there was one plate that gave indications of salt, and in the other a faint reaction that would be normal to anything that is tested in a commercial way; so that it gave positive and negative [157] information. Do you want me to refer to the other plates that were examined?

Q. Yes.

A. There was a third plate used for what we term scientifically a blank to find the relation to the normal salt, to salt that may have found access through salt water or any other extraneous source, and the amount in one of the rusted plates and the blank, one containing no particular amount of rust, were the same, so there would be normally a slight amount of salt in the undamaged plate and there was an excess of salt on a comparative basis on one of the damaged plates.

(Testimony of P. W. Tompkins.)

Q. Did you notice whether there was any pitting on the plates?

A. There was a great deal of pitting; I did not make that a special point but it was very evident.

Q. What conclusion did you come to with reference to the cause of the pitting?

A. That was, in conjunction with water, most likely, and carbon dioxide; carbon dioxide in the presence of water has a very corrosive effect.

Q. With reference to corrosiveness, is it one of the very corrosive agencies?

Mr. LILLICK.—I object to the form of the question, if your Honor please.

The COURT.—It is leading.

Mr. HENGSTLER.—Yes, it is a leading question but it is asked for the sake of saving time.

Q. What kind of an agency is it with reference to corrosiveness?

A. A very powerful agency. Probably a description of the properties of carbon dioxide might be more to the point, if that is permissible.

Q. You can explain anything on the subject you wish to.

A. Carbon dioxide is the agency by which all rocks are disintegrated [158] in the presence of water, and by its agency soluble salts are made. It is the principal agent which decomposes rock in the sense that they disintegrated into soil and into soluble salts when they are originally unsoluble. It is a very powerful solvent.

(Testimony of P. W. Tompkins.)

Cross-examination.

Mr. LILLICK.—Q. Salt is also a very corroding agency, is it not?

A. Yes, sir, under certain conditions.

Q. What is the temperature necessary to enable carbon dioxide in coke to be again released to the atmosphere?

A. Any advanced temperature to the point of saturation where it was originally absorbed.

Q. As I understood you on direct examination, you said it would at least have to come to a boiling point?

A. Oh, yes, that is, to liberate all.

Q. Would the heat have to be raised to the boiling point before the carbon dioxide would be released?

A. Oh, no, it is proportionate with any advanced temperature from whatever point of saturation it had originally.

Q. Is sulphur a chemical that could be released in the same way?      A. Do you mean by a vapor?

Q. Yes, a rise in temperature.

A. And do you refer to coke?

Q. Yes.

A. I don't think so; I don't think any sulphur volatile compounds are in coke; they are all driven off.

Q. The carbon dioxide you have been referred to would only be carbon dioxide which the coke absorbed from the air itself?

A. The water; I think possibly there may be some formed during the coking process; when that is

(Testimony of P. W. Tompkins.)

carried on a little bit further that is what is known as water gas.

Q. Would not that be released both after the coking process [159] and the coke coming out of the red hot furnace?

A. No, the temperature is diminished and then it would be formed and dissolved by the water.

Q. Is there any great possibility of that being given off again by the coke?

A. No, except during advanced temperatures. When I say advanced temperatures, we were speaking of normal temperatures then; when coke goes into commercial use it is not at any high temperature.

Q. Would it not be rather a negligible quantity in vapor arising from coke?

A. No, it is quite a serious one.

Q. How much percentage of actual body of vapor given off is there?

A. I could not answer it in figures of that kind. At about 40 degrees Fahrenheit 100 volumes of water will absorb about 150 volumes of carbon dioxide, and at about 100 degrees Fahrenheit it will only absorb about 50; in other words, it would have released about 100 volumes, the water being heated 40 degrees to 100 degrees.

Q. Were you able to tell from your examination of the place whether or not carbon dioxide was a part of the deposit?

A. It would have left no residuum deposit, we did not examine for it anyway, we were only after salt.

Q. Yes, it was an afterthought. You could not



(Testimony of P. W. Tompkins.)

say whether the pitting or the rust on the steel plates was the result of salt or some other corroding agency, or carbon dioxide, could you, Mr. Tompkins?

A. You could to a certain extent. The pitting of the plate that was not salt damaged was not due to salt naturally.

Q. In your opinion it was not?

A. It could not have been because there was no salt there.

Q. As I understood you, one plate showed salt reaction? [160]

A. One did and one did not.

Q. How many did you examine? A. Three.

Q. Out of how many?

A. I haven't any idea. They were in piles.

Q. Were there not over 2,000?

A. I haven't any idea.

Q. And yet out of those piles these three were given you to make an examination?

A. No, I selected them myself.

Q. Selecting the ones showing the most—

A. (Intg.) The most marked evidences of water damage.

Q. And then a medium amount and then the least amount? A. No, the most amount in two cases.

Q. The most amount in two cases?

A. In two cases.

Q. How, as to the cement, how many barrels of cement were there in the warehouse?

A. I could not answer that.

Q. Did you pick out the barrels?

A. I just judged of the greatest amount of ex-

(Testimony of P. W. Tompkins.)

ternal water damage.

Q. How many of those barrels did you take?

A. Two barrels.

Q. Mr. Tompkins, you were told when you went to the plates, as well as to the cement, that they formed part of a cargo of a vessel that had coke in it, were you not? A. Yes, sir.

Q. Were you not also asked to determine from your examination of the plates and the cement whether or not there had been any niter in the vessel previous to the cargo it brought when it brought the cement and the plates? A. I was.

Q. Were you not also told that the cement and the plates were brought in the same cargo with coke, and the probability was that the damage was due to sweat?

A. I do not recall that I was instructed as to what the probable cause of the damage was; I may have been, but I do not recall it. [161]

Q. Would you say now that the report you made was not to some extent based upon the assumption that the damage was done by sweat?

A. I think the report speaks for itself.

Q. And the report so speaks, does it not?

A. That it must have been due largely to sweat.

Q. And in that report, did you not write as follows:

“Inasmuch as the steel plates and cement were stowed in the same vessel (Dolbadarn Castle) and in the same hatch, and that the plates were protected from below by steel bars,

(Testimony of P. W. Tompkins.)

and from the top by bars and the carrels of cement in question and some plates and cement show marked evidence of water damage, and the cement and staves, by the nature of the material, are capable of absorbing water in larger proportions than the steel plates, could retain by capillary attraction, it would be inferred that this damage, in spite of the indication on the one plate, is due to fresh water, or if such is not the case, that the conditions under which the steel plates have been exposed from the time they left the factory, are not the same conditions which surround the cement shipment.”

With that in view, Mr. Tompkins, and refreshing your recollection to that extent, would you not say that to some extent at least the report you made was based upon statements made to you about how the cement and the plates were stowed?

A. I have no first-hand knowledge of how it was stowed.

Q. And yet your deduction was based to some extent upon that as the report itself states?

A. Yes, that is self-evident.

Q. In the report you were properly careful about also stating that the plates might have been damaged in the shipment from the factory to the vessel; what is the situation about that? [162]

A. Well, salt could come from almost every source if the plate were by any chance wetted with fresh water.

Q. And the plates might also have been damaged

(Testimony of P. W. Tompkins.)

during the course of the trip from the factory to the vessel by carbon dioxide?

A. If they were wetted; yes, sir.

Q. If it be the fact that these steel plates were when received by the vessel in a damaged condition and were more or less rusty when received by the vessel and before being put in the hold, you would think that an important factor, would you not, as to the cause of the rust?

Mr. HENGSTLER.—If your Honor please, the expression “damaged condition” is not proper in the question.

Mr. LILLICK.—I will have the words “damaged condition” go out of the question and let the question be read to the witness. I will say, in a more or less rusty condition.

(The question as amended, was here repeated by the Reporter.)

A. Well, if they were rusty before they got into the vessel it would be an important factor as to their rusty condition; yes, sir.

Q. I notice in your report you also have used the language, reading from the first page:

“One plate, very badly rusted (red glossy and amorphous rust) showing pronounced water marks, was washed with distilled water and the filtered washings gave a marked reaction for salt.”

Is not red rust a distinguishing mark of salt rust?

A. Oh, no; there is no distinguishing mark. Salt does not show anything about the character of the rust.

(Testimony of P. W. Tompkins.)

Q. You cannot tell from the inspection and without a natural [163] chemical test whether or not the rust is rust caused by some salt substance or some other chemical?

A. You cannot tell what the cause is. Rust is an oxide of iron and unless it has left some residuum effect from the cause you cannot determine it.

Q. It was trying to get a distinguishing feature as between the pitting from the salt and the pitting from carbon dioxide or some other chemical.

A. That I could not answer.

Q. What does the word "amorphous" mean?

A. It means sort of a nondescript and conglomerate mass.

Q. And without any crystalline deposit?

A: Yes.

Q. Would it not be possible, Mr. Tompkins, for a rust to have been caused upon these steel plates by reason of damage done to them from sweat or vapor that arose through salt water having found its way into that hold and thereafter having been released into the atmosphere by reason of heat through which the vessel passed? A. Yes, sir.

Q. In other words, upon those plates that showed no reaction of salt the rust upon those plates may have been the result of sweat from salt water that had been deposited in that hold?

A. Yes, but not exclusively.

Q. The point I am particularly directing your judgment to is the fact that sweat is ordinarily a deposit of water which has been held in solution in the



(Testimony of P. W. Tompkins.)

atmosphere and thereafter by coming in contact with some cold substance has again formed into drops and is released? A. It condenses.

Q. Yes, condenses and then drops again?

A. Yes.

Q. In a situation of the sort here as where this material was in the hold of the vessel, salt water having been injected [164] into that hold, heated and arising in the form of a vapor would leave behind it the salt and thereafter be deposited in a clear state upon the other plates; that might be an explanation for the reaction upon the plates that showed no salt reaction, would it not?

A. I think that is a little involved; I cannot understand it.

The COURT.—Let me put it to you in a little simpler form.

Q. The salt water evaporating leaves the salt behind, does it not? A. Yes, sir.

Q. If the vapor is then condensed and turns to the plates, the plates would show no reaction of the salt thereafter, would they? A. That is correct.

Mr. LILLICK.—Q. Again, referring to your report, Mr. Tompkins, you have closed it, at the very bottom of the page the last paragraph, with the following words:

“In conclusion, we may state, that all matters being considered, the predominating evidence is against the supposition that the iron plates have been damaged by salt water, whereas in the cement there is no doubt in the fact that fresh water

(Testimony of P. W. Tompkins.)

damage alone has been responsible for the condition of the barrels examined, and may be due to either direct contact with fresh water or to an excessive sweating of the coke cargo (a dangerous factor in this connection), or to both conditions combined.”

All through the report that you have made upon this examination, Mr. Tompkins, you had in mind the fact that this cement and that these plates were carried as a part of a cargo of a vessel that also had a large proportion of coke in it, had you not?

A. That is correct. [165]

Redirect Examination.

Mr. HENGSTLER.—Q. Mr. Tompkins, from the whole examination you made did you come to the conclusion that the pits created upon these steel plates were made by sweat arising from salt water?

A. Well, I cannot say that the conclusion at the time had anything to do with the pitting of the plates at all. There was a distinction between salt damage and fresh damage. But if that question is asked here, and I am asked what my views are regarding it, it is something outside the report, but my views regarding the pitting are that the coke must have been a very potent factor in the cause of pitting.

Q. This carbon dioxide which is liberated from the coke, how does its corrosive quality compare with the corrosive quality of salt water?

A. Well, salt water in itself cannot contain as much carbon dioxide as pure water can, and so for that reason alone the amount that could be released

(Testimony of P. W. Tompkins.)

from salt water would be minimized. The saturation point of salt water is much lower in carbon dioxide than of fresh water.

Q. You have frequently examined cargoes that have come out of ships, have you not—chemically?

A. Yes, sir.

Q. You find some salt water reaction always in anything that comes out of a vessel, do you not?

A. It depends entirely on the cargo. Some have a great amount of salt and others have less; it depends on the character of the material.

**[Testimony of H. L. Van Winkle, for Libelant.]**

H. L. VAN WINKLE, called for the libelant, sworn.

Mr. HENGSTLER.—Q. What is your business?

[166] A. I am an importer of iron and steel.

Q. How long have you been engaged in that business? A. 35 years.

Q. You are familiar with different kinds of steel now being imported here?

A. Yes, steel of every description.

Q. Do you know the distinction between steel bars and steel plates? A. I do.

Q. With reference to sensitiveness as to outside influences, how do steel bars compare with steel plates?

A. Owing to a steel plate having a very much larger surface it is very much more susceptible than a bar, which has a small round surface, or a flat one, a flat and smooth surface, attracting very little moisture.

(Testimony of H. L. Van Winkle.)

Q. You saw the steel plates that came out of the "Dolbadarn Castle," did you not? A. I did.

Q. Where did you see them first?

A. I sold the plates originally to the Dunham, Carrigan Company. On their arrival on the "Dolbadarn Castle" I went down to the vessel and saw them on the dock.

Q. Were you interested in them in any way?

A. I sold them. I went to the dock and saw them on the dock. I saw that they were rusty. Mr. Riffle told me that the plates were rusty and he was going to reject 185 tons. I went to Dunham, Carrigan & Haydens to see the plates. I recognized the plates right away; they were peculiarly marked "D. C. H. Co., S. F." with a yellow mark. They were all marked that way. I positively identified them as the plates I saw on the dock.

Q. Do you happen to know whether the chemist who testified here picked out his particular specimens from these particular plates? [167]

A. From those piles, yes.

Q. Were you present at the time?

A. No, sir, I was not, but Mr. Riffle told me he had given him plates from those piles. I saw the test myself, the silver test on the plates. The rust was very thick and black. He made the test on the plates. I saw the reaction in some; in some there was only a trace.

Q. In the course of your experience you have become familiar, have you not, with the kind of damage which salt water makes upon steel plates?

(Testimony of H. L. Van Winkle.)

A. Yes, sir.

Q. How did the damage on these particular steel plates compare with the damage which you have known to be created by salt water on steel plates?

A. It seemed to be very much different in that the rust was very black; it was rather different in appearance as salt water rust is rather yellow; this being entirely of a different nature it attracted my attention.

Cross-examination.

Mr. LILLICK.—Q. Did you hear Mr. Tompkins testify a few minutes ago that salt water rust had no marked distinction from other kinds of rust, in color?

A. Well, he means from other kinds of water. I heard his testimony and I understood it. You take fresh water and you take salt water and throw them on a plate it will give about the same color of rust. That is what he meant.

Q. You are interested with Parrott & Company, are you? A. No, sir.

Q. Were not these steel plates consigned to Parrott & Company? A. Yes, sir.

Q. What is the connection by your having sold the steel plates and the consignment being to Parrott & Company? [168]

A. I sell the plates, Parrott & Company imports them. I turn the orders over to Parrott & Company. They charter the vessel and attend to bringing out the cargo. I do the selling of all the steel for Parrott & Company.

Q. Then Parrott & Company were representing



(Testimony of H. L. Van Winkle.)

you in the transaction? You gave them the order for steel plates and they sent the order on and had the shipment made up, and got the vessel, and so forth?

A. Not exactly. I acted as a broker. I sell the plates and turn the business over to Parrott & Company and they do the business for themselves and not for me.

Q. Will Parrott & Company lose anything on this transaction if the plates are rejected?

A. Why certainly, they will lose it all. We had to take the plates from the Dunham, Carrigan Company; they were not delivered in merchantable condition; we had to sell them for practically nothing—for  $11\frac{1}{2}$  cents a lb. They were practically given away for less than cost, less than they cost in the mill. They were useless; you could not put them into anything. It was to be used for boilers. They were so badly pitted they could not be used; it was like a chain, the weakest link is the strength of the chain.

Q. How long were they on the dock?

A. Just two days; they hauled them Saturday and Monday; Sunday intervened.

Q. Where did they go?

A. Right to the warehouse; I saw them rolled in.

Q. How long did it take to deliver the steel?

A. It takes one hour and 15 minutes for a trip from the dock to their warehouse.

Q. How long did it take to deliver the entire load?

A. Well, there were 1068 plates and it took two days. [169]

(Testimony of H. L. Van Winkle.)

Q. Were there not some 2700 plates?

A. No, sir; 1068.

Mr. HENGSTLER.—We rest our case, your Honor.

Mr. LILLICK.—I have not offered the depositions in evidence yet, if your Honor please; I offer the depositions of John Baxter, John Owens, Jan Olson, Robert Canchar.

Now, I desire to read into the record certain portions of the log, as follows: Under date of March 12th:

**[Excerpts from Log.]**

“Midnight; fine breeze & clear; men employed in various jobs; pumps, lights and lookout attended; fore & after hatches kept open at every opportunity to ventilate the hold night and day.

April 8th, 1910. Noon; fine breeze & clear; fore & after hatches kept open to ventilate the hold.

April 14th. Opened the main hatch to ventilate the hold.”

That was at 2 P. M.

“April 16th, 1910, 2 P. M. Calm, main hatch kept open at every opportunity to ventilate the hold.”

Mr. HENGSTLER.—May I interrupt you just a minute, Mr. Lillick? If your Honor please, there is no objection to reading all these entries into the record from the log-book, but I think the law is settled that these entries are not proper evidence upon

the ground that they are self-serving. The log-book cannot be offered in evidence by the ship. If there is any portion of it which I can discover which is opposed to the interests of the ship, then it is properly admissible in evidence; but no entry made by these people—self-serving—is admissible in evidence at all. But I have no objection to the whole log being read into evidence. [170]

Mr. LILLICK.—I want to read it in, also to refresh your recollection, Mr. Hengstler, we stipulated upon the taking of the deposition that either party might read the log and might use it in evidence. Don't you remember that we stipulated that the logs might be used in evidence?

Mr. HENGSTLER.—I do not think that that was meant to be anything except so far as the evidence might be admissible. You could not prove these things by the witnesses even if it was offered in the depositions at the time.

Mr. LILLICK.—But for the purposes of your own case you were willing to stipulate with me that the log-books might be offered in evidence, and you did stipulate that the log-books might be offered in evidence on the trial by either party.

Mr. HENGSTLER.—Yes, that they might be offered in so far as the entries in the log-book were admissible.

Mr. LILLICK.—I don't think that was put in; it might have been, but I don't think so.

Mr. HENGSTLER.—Well, it might save time to read them now and then we can thresh that matter out between us afterwards.

Mr. LILLICK.—The next is June 20, 1910.

“Fine breeze & clear; fore & aft hatches kept open night & day at every opportunity to ventilate the hold.”

The next is:

“March 4th: Moderate gale with heavy westerly sea; ship diving heavy & shipping heavy water.”

The next is March 10th:

“Strong breeze with squalls; at 1 P. M., took in all small sail & main topmast staysail; at 2:30 heavy hail squall; took in upper topgallant sails at 3 A. M., the clew-iron of the main lower topgallant sail carried away [171] & the sail flap to pieces; took in the foreone; noon, strong gale & high sea; ship shipping heavy water; p. m. less wind at 4 p. m. bent another main topgallant sail & set it & the fore one; midnight, fine breeze & clear with heavy N. W. sea; all sail set; pumps, lights & lookout attended.”

The next is May 3rd:

“Strong breeze & overcast; at 3–30 a. m. set the main sail. Strong breeze with squalls at 8 a. m. took in the main sail. Noon, strong wind & heavy sea. Strong wind at 2 p. m. Set reef mainsail; 5 p. m. heavy squall; took in fore & main lower topgallant sails & main sail; strong wind; midnight, moderate gale & high sea, pumps, lights & lookout attended.”

The next is May 4:

“Strong gale & high sea; ship labouring heavy & shipping heavy water; fore & after hatches had

to be batteneed down; main ventilator covered up to prevent seas getting below. Noon, strong gale. Ditto. Ditto at 6 p. m. took in upper topsails & jib; ship labouring heavy & shipping heavy water; midnight, heavy gale & high sea; pumps, lights & lookout attended."

The next is Thursday, May 5th:

"Heavy gale with terrific squalls; at 1-30 a. m. took in foresail; ship labouring & straining heavy and shipping heavy seas; at 7 a. m. mountainous sea came over the bow; broke top of both lighthouses and glasses, also broke diaptric glass of port sidelight, tore the belfrey from its fastenings on forecastle head, the bell unshipped and went overboard through one of the ports; some pieces of belfrey picked up; the bell scraped a large hole in one of the deck planks and the belfrey 2" into another plank; the wave burst inner jib and foretopmast at staysail and they went to [172] ribbons; lost downhoul, halyards, &c. at the same time carried away.

"Friday 6th May, 1910: Inner jib stay which went through fore lower topsail carrying away footrope of sail which went to ribbons immediately with buntlines, clewlines and blocks attached; it was now blowing a perfect hurricane; ship under main lower topsail with lee-sheet slacked off; the inner jib stay cast adrift port side of fore upper topsail and that side of sail was lost with gear and blocks; they stay did also much damage to service on standing rigging; the wire foot of lower topsail cut the foresail



which was fast so badly that it will take several bolts of canvas to repair it; the buntlines were also cut, remains of jib and staysail halyards came on deck one on each side and got foul of fore braces and fore topsail braces, the wire cutting them so much that new ones had to be rove; they were only rove new the week before; washed away outside chocks of lifeboat and smashed bridge from poop to top of house. W. C. door. which was 1 1-2 solid teak smashed, washed gratings from skylight on poop and two went overboard; shipped heavy seas on poop and a lot of water got into cabin & sail-locker; one plate between rudder and stern-post washed away; gammoning-band on bowsprit torn from fastening above the stem; secured the bowsprit with chain passed round the stem; the bowsprit seems to have come in slightly as the plate on fore part of forepeak hatch where heel of bowsprit comes in bulged aft; found both lugs of band on foremast where maintopmast spring stay is set up to cracked.

“Saturday 7th May: 1910. Calm & overcast. 6 a. m. breeze sprung up from the N. W. bent upper fore topsail; noon, strong [173] breeze & veering to the westward, all sail set.”

The next is:

“May 8th: Moderate gale with high sea; ship shipping heavy water. Ditto. 8 a. m. wear ship to the southward; 10 wear ship to W NW; noon, strong wind. ditto at 4 wear ship to southward; 5 p. m. wear ship to the westward, wind veering

to the S SW; midnight, strong wind with heavy squalls, ship labouring heavy & shipping heavy water, pumps, lights & lookout attended."

The next is:

"May 17th. Moderate gale & high sea; ship shipping heavy water; 4 a. m. wind veering to the S. W. with squalls. Noon, moderate gale. Ditto at 2 p. m. sighted the land, Staten Island at 4-30 sighted New Year Island light, at 10 p. m. off Cape St. John."

The next is:

"May 19th. Strong breeze & variable with rain 8 p. m. took in fore & main topgallant sails & main sail; 10 p. m. took in fore upper topsail. Midnight, heavy gale & high sea, ship shipping heavy water, pumps, lights & lookout attended."

The next is May 20th:

"Heavy gale & high sea, took in main upper topsail, ship labouring & straining heavy & shipping heavy water; at 4 a. m. wind veer to the southwest & falling light ship rolling heavy; 8 a. m. wear ship to the westward, set upper topsails & lower topgallant sails; noon, set main sail; strong breeze & heavy head sea with snow squalls; at 4 p. m. set upper topgallant sails; midnight, wear ship to the S SE, wind veering to the westward."

Mr. HENGSTLER.—You do not claim that these are very heavy gales to encounter coming around the Horn, do you?

Mr. LILLICK.—No, but I claim the ship was laboring in the sea, shipping heavy seas, and the

decks were awash. [174]

The next is:

“May 22, 1910. Moderate gale with high sea; ship labouring & straining heavy & shipping heavy water; 8 a. m. less wind & veering to the N NW, set main *sale* & main lower topgallant sail. Noon, strong wind & heavy sea, ship shipping heavy water. P. M. ditto; at 8 p. m. took in main sail. Midnight, strong wind & heavy S W sea; ship labouring & shipping heavy water, wind bucking to the northward.”

The next is:

“May 23: Moderate breeze & overcast, set mainsail & lower foretopsail & lower foretopgallant sail, heavy S W sea, ship shipping heavy water. Noon, strong breeze with rain; p. m. ditto, at 6 p. m. took in fore lower topgallant sail. Midnight, strong wind & high sea; pumps, lights & lookout attended, fore & after hatches had to be battened down also main ventilator covered up to prevent seas getting below.”

The next is:

“May 24: Moderate gale with high sea, ship labouring & straining heavy & shipping heavy water; at 3 p. m. took in main sail & main lower topgallant sail; at 7 a. m. wind chop round to the S W, strong; noon heavy gale with snow squalls; p. m. moderate gale with snow squalls; at 6 p. m. set main sail; 10, set lower topgallant sail. Midnight, moderate gale, ship labouring heavy & shipping heavy water; pumps, lights & lookout attended.”

The next is:

“May 25: Moderate gale & high sea, with snow squalls; ditto; noon, moderate gale with heavy snow squalls; took in lower topgallant sails; heavy snow squalls, ship labouring & straining heavy & shipping heavy water; ditto midnight, moderate gale with rain squalls.”

The next is:

“May 26: Moderate gale with high sea, ship [175] labouring & straining heavy & shipping heavy water; ditto; noon, moderate gale, wind veering westerly; strong wind with drizzle rain; ditto; midnight, less wind, wear ship to the southward.”

The next is:

“May 27: Light wind & heavy sea, with drizzle rain; strong breeze with thick rain; at 7 a. m. took in main sail & inner jib; noon, wind chop round to the southward; light wind & variable with showers & heavy sea, ship rolling heavy.”

The next is:

“May 29th: Strong breeze with heavy cross sea; 4 a. m. took in mainsail; at 7 took in main lower topgallant sail; ditto; noon, strong breeze with rain; ditto; ditto; midnight, strong breeze with showers of rain.”

The next is:

“May 30: Strong wind with heavy sea, ship labouring & straining heavy; ditto at 7 a. m. wind chop to the S SW set main sail & lower topgallant sails; noon, strong wind & heavy cross sea, ship shipping heavy water.”

The next is:

“August 2nd: Strong breeze & overcast, with heavy head sea, took in all small sails; ditto at 9 a. m. took in upper topgallant sail. Noon; strong breeze & heavy sea with the plugs out of the hawse-pipe and the ship diving heavily; great quantity of water coming through; found forepeak hatch where bowsprit comes against leaking badly secured it temporary; ditto; mid-night, strong breeze with haze & overcast sky; men employed in various jobs.”

The next is:

“August 3rd: During the passage main hatches were taken off in fine weather to ventilate hold; the fore & after hatches were kept off at all time except when forced to batten them down in bad weather.”

They arrived in San Francisco the next day. I want to [176] put this in to show the date of the arrival.

The next is:

“August 4th: Light wind from the westward with haze & drizzle; rain at 5-30 a. m. the quarantine doctor came on board, the pilot left noon.”

WE REST.

(The cause was here continued until Saturday, November 22, 1913, at 9 A. M. for argument.)

[Endorsed]: Filed Feb. 10, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [177]



*In the District Court of the United States in and for  
the Northern District of California.*

PARROTT & COMPANY (a Corporation),  
Libelant,

vs.

The British Ship "DOLBADARN CASTLE," Her  
Tackle, Apparel and Furniture,  
Respondent.

**Depositions [of John Baxter et al. for Respondent.]**

BE IT REMEMBERED that on Thursday, September 15th, 1910, and Friday, September 16th, 1910, pursuant to stipulation of counsel, at the office of Ira S. Lillick, Esq., in the Kohl Building, in the City and County of San Francisco, State of California, personally appeared before me, James P. Brown, Esq., a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc., John Baxter, John Owen, Jan Olsson and Robert Conchar, witnesses produced on behalf of the respondent.

L. T. Hengstler, Esq., appeared as proctor for the libelant, and Ira S. Lillick, Esq., appeared as proctor for the respondent, and the said witnesses having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the depositions of John Baxter, John Owen, Jan Olsson and Robert Conchar may be taken *de bene esse* on

(Deposition of John Baxter.)

behalf of the respondent, at the office of Ira S. Lillick, Esq., in the Kohl Building, in the City and County of San [178] Francisco, State of California, on Thursday, September 15th, and Friday, September 16th, 1910, before James P. Brown, Esq., a United States Commissioner for the Northern District of California, and in shorthand by Clement Bennett.

It is further stipulated that the depositions, when written out, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said depositions, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witnesses and the signing thereof is hereby expressly waived.)

**[Deposition of John Baxter, for Respondent.]**

JOHN BAXTER, called for the respondent, sworn.

Mr. LILLICK.—Q. State your name, age and occupation.

A. My name is John Baxter; age, 45; occupation, master mariner.

Q. How long have you been a master mariner?

A. 15 years.

Q. How long have you been master of the "Dolbadarn Castle"? A. Nine years.

Q. How old a vessel is she? A. 12 years old.

Q. How is she constructed? A. She is steel.

(Deposition of John Baxter.)

Q. What kind of deck?     A. Pitch pine.

Q. How many decks has she?

A. Just the main deck. No between-decks, but between-deck beams.

Q. I hand you a pen and ink drawing, Captain, and ask you whether that is approximately a correct description of the vessel with [179] its holds, and the character and amount of its cargo in its various compartments. (Handing.)

A. Yes, sir; it is quite correct.

Mr. HENGSTLER.—Q. You mean as far as stowage is concerned?     A. Yes, sir.

Q. Not as far as dimensions is concerned; just as far as stowage is concerned?

A. Just as far as stowage is concerned, yes.

Mr. LILLICK.—I will offer this in evidence.

(The document is marked Respondent's Exhibit "A.")

Q. What is the depth of the hold?

A. 23 feet, 5 inches from the main deck down to the bottom.

Q. The various figures as to tonnage in the various compartments on this plat are correct, or are they not?     A. They are correct.

Q. How many ventilators are there on the vessel?

A. Five. Two forward, two aft, and a large one amidships.

Q. What kind of ventilators are they?

A. Cowell ventilators.

Q. As to the central ventilator, what position was it in with regard to the cement that was stowed on board?

(Deposition of John Baxter.)

A. The main deck ventilator went right down through the pump-well, and it was open one foot underneath the between-deck beams on top of the tanks, and there were also places for ventilating the between-decks, as well.

Q. Where were your water-tanks?

A. The water-tanks were stowed underneath the amidship ventilator and between the cargo. It went right through the general cargo.

Q. What do you mean by between the cargo?

A. That is cargo on both sides of the tanks.

Q. How large were the tanks?

A. 2,500 gallons each.

Q. What portion of the hold did they occupy, in length?

A. They are 8 feet by about 16 feet across. There are two tanks, one alongside of each other. [180]

Q. Did the 8 feet in breadth run crosswise across the ship?

A. No, sir; that one ran fore and aft.

Q. Give the dimensions, Captain, as to depth, running down in the hold, length running with the ship, and breadth running crossways.

A. 12 feet high, 8 feet fore and aft, and 2 tanks 12 feet across athwartships.

Q. How was the cargo stowed as to its nearness to these tanks?

A. Right up against the battens that run up and down the tanks. The battens were to prevent the tanks being chafed.

Q. Where were the hatches with reference to the cement?

(Deposition of John Baxter.)

A. The cement came halfway along towards the main hatch, up to the forward bulkhead.

Q. How was the cement separated from the coke?

A. By two bulkheads. They were built in a most perfect manner, those bulkheads, and lined inside with mats all over from the main deck to the bottom of the lower hold.

Q. Is that a usual thing in stowing vessels, when there is cement and coke in the cargo?

A. It is a most unusual thing to have the coke separated the same as it was in my ship.

Q. Why? Have you any explanation of that?

A. There have been so much damage through not having bulkheads, and I was instructed to have a most perfect bulkhead built on each end of the general cargo.

Q. By whom was the stevedore appointed?

A. By the charterer.

Q. Was there any certificate issued after the vessel was loaded?

A. Yes, sir; there was a certificate issued by the stevedore.

Q. Where is that certificate? A. I have got it.

Q. Have you got it here?

A. I have not. I had it yesterday, but it is at the stevedore's amongst my other papers. I left it down there. [181]

Mr. LILLICK.—I should like to have that certificate. I do not know what it is worth, Mr. Hengstler. It may be objectionable.

Mr. HENGSTLER.—I shall object to the certifi-



(Deposition of John Baxter.)

cate of the stevedore who is not present, on the ground it is hearsay and incompetent.

Mr. LILLICK.—I will not offer it.

Q. What, if anything, did the stevedore certify as to the stowage of the cargo?

Mr. HENGSTLER.—I object to that question, because if he certified, he would probably certify it in a certain writing. (To the witness.) Did he not, Captain?

A. Yes, I had a letter certifying it.

Q. Have you got that letter here?

A. It is down at the stevedore's amongst my other papers.

Mr. LILLICK.—Q. Cannot you send one of your apprentices after it, Captain? A. Yes, sir.

Q. You are familiar with the condition of your vessel with regard to stowage, are you not?

A. Yes, sir.

Q. In your opinion was this cargo stowed properly or improperly?

Mr. HENGSTLER.—I will reserve an objection to that, on the ground it is a conclusion of law and involves a question of law as to whether cargo is stowed properly or not.

A. Yes, sir, it was.

Mr. LILLICK.—Q. How long did you say you had been master of the vessel? A. Nine years.

Q. During those nine years how many cargoes have you had loaded upon her? A. Eight.

Q. From your knowledge of the manner in which the vessel carried her previous cargoes, are you in

(Deposition of John Baxter.)

a position to state whether the [182] manner in which the cargo was stowed on the voyage out of which this action has arisen, made the vessel stiff, or tender or cranky?

A. The ship was in beautiful trim.

Q. In your opinion was the vessel stowed properly or improperly?

Mr. HENGSTLER.—Objected to on the ground that it does not call for a fact but a mere conclusion of the witness, and involving a conclusion of law.

A. Properly.

Mr. LILLICK.—Q. I hand you what purports to be a charter-party dated November 17th, 1909, between the Dolbadarn Castle Ship Company, Limited, and Parrott & Company, and ask you whether it is the charter-party for the voyage from Rotterdam to San Francisco in which the cargo, the damage for which has been sued for in this case, was carried. (Handing.) A. That is the charter-party.

Mr. LILLICK.—I offer this in evidence as Respondent's Exhibit "B."

(The paper is marked Respondent's Exhibit "B.")

Q. I hand you a document marked "California Trade Bill of Lading," dated Rotterdam, February 19th, 1910, and ask you whether it is the bill of lading under which the steel for which the alleged damage to which this action has been brought was shipped. (Handing.)

A. Yes, sir, that is the charter-party, at least the bill of lading.

Mr. LILLICK.—I offer this in evidence and ask

(Deposition of John Baxter.)

that it be marked Respondent's Exhibit "C."

(The paper is marked Respondent's Exhibit "C.")

Q. I hand you a document marked "California Trade Bill of Lading," dated Rotterdam, February 19th, 1910, which purports to be a bill of lading for 2775 barrels of cement, and ask you whether it is the bill of lading under which the cement for the alleged damage [183] to which this action was brought was shipped. (Handing.)

A. Yes, sir, that is the bill of lading.

Mr. LILLICK.—I offer that in evidence as Respondent's Exhibit "D."

(The document is marked Respondent's Exhibit "D.")

Q. What was the condition of the "Dolbadarn Castle" in Rotterdam before the voyage commenced, if you know?

A. It was in good condition. The ship had just passed No. 3 survey.

Q. What is No. 3 survey?

A. A special survey; No. 3 special survey; that is when she is twelve years of age.

Q. Do you know whether any tests were made of the deck to see if it was water-tight?

A. Yes, sir, they were tested by the surveyor.

Q. What surveyor? A. Lloyd's Surveyor.

Mr. HENGSTLER.—Q. They were not tested by you yourself? A. Not myself personally.

Mr. LILLICK.—Q. You were there when the test was made? A. I was.

Q. How was it made, with water or otherwise?

(Deposition of John Baxter.)

A. The carpenter tested it with a caulking iron.

Mr. HENGSTLER.—Q. That was to see if the seams were all right? A. Yes, sir.

Mr. LILLICK.—Q. Did the deck pass inspection?

A. Yes, sir.

Q. What character of a voyage did you have, Captain, as to fair weather or stormy weather?

A. We had one of the heaviest gales that ever I experienced during the 26 years.

Q. Captain, I hand you what purports to be the log-book of the bark "Dolbadarn Castle" on her voyage from Rotterdam to San Francisco, contained in two log-books, one commencing upon the 23d day of February, 1910, and ending on the 24th day of May, 1910, the other commencing on the 25th day of May, 1910, and ending on the [184] 14th day of September, 1910, and ask you whether these two books contain the daily log of the vessel for the voyage between Rotterdam and San Francisco. (Handing.)

A. They do.

Mr. HENGSTLER.—Q. They are made out by the first mate, or aren't they? A. Yes, sir.

Q. They are not made by yourself?

A. No, sir.

Mr. LILLICK.—Q. They are signed on each page by you? A. Yes.

Q. Did you go over these from day to day when they were signed? A. Yes, sir.

Q. Do you know whether or not these contain a daily statement of the character of the voyage and what happened upon it, written upon the days when

(Deposition of John Baxter.)

the log purports to have been written?

A. Yes, sir.

Mr. LILLICK.—I will ask that these books be marked Respondent's Exhibit "F" and "G" for Identification.

(Counsel stipulate that the log-book may be offered in evidence by either party on the trial of the case, and be used without objections, and that it may remain in the custody of counsel for the respondent until the trial.)

Q. During your experience as a mariner how many times have you gone around the Horn?

A. 12 times.

Q. How did the weather upon the trip which you have just closed compare with the weather upon your previous voyages?

A. As I said before, we had one of the worst gales that ever I experienced on this passage.

Q. For how long a period did the heavy weather continue?

A. The first heavy weather lasted three days.

Q. When did that heavy weather commence?

A. On the 5th of May.

Q. Was any damage done to the vessel?

A. Yes, sir; there was a good deal of damage done.

[185]

Q. What?

A. Stays carried away, sails blowed away. The bell was torn from its fastening and the forecandle-head, the belfry, was smashed.

Q. How high is the belfry above the deck?



(Deposition of John Baxter.)

A. Eight feet *about* the main deck.

Q. What happened with regard to the waves?

A. There was a monstrous sea came over the bow that swept everything.

Q. What do you mean by "swept everything."

A. It filled the decks fore and aft.

Q. What was the condition of your ventilators at the time that this heavy sea came on board, if you know?

A. The ventilator on the main deck was covered. We had covered it a short time before that.

Q. What was the condition of the hatches?

A. The hatches were battened down.

Q. How long after this first heavy weather that you had did you have other heavy weather, if you had any?

A. We had a few days afterwards when we got down towards Cape Horn.

Q. How long did this continue?

A. Off and on for about 10 days.

Q. Do you know what effect, if any, this heavy weather had on her decks?

A. Yes, sir; they were strained and leaking in some places.

Q. How do you know?

A. I saw evidence of it underneath the deck, on the cargo being discharged.

Q. What evidence did you see of it?

A. I could see it had been wet at the seams.

Q. How could you tell it had been wet at the seams?

(Deposition of John Baxter.)

A. You could see it; the damp had not gone out from the wood, and you could see the dry salt in some places.

Q. Were there any stains alongside the seams?

A. Yes, sir.

Q. Did you examine the vessel in the hold as to the opening about the main ventilator?

A. Yes, sir. [186]

Q. What was the condition there?

A. I found that the salt water went down there.

Q. What evidence of salt was it?

A. I could see the traces of it running down the tanks, and on the edges of the plates.

Q. You are speaking now of the time when you examined the vessel after she was being loaded, are you? A. Yes, sir.

Q. How close to the edge of the tanks was the steel piled?

A. One inch and a half from the sides of the tanks.

Q. And how was the steel piled?

A. Plate upon plate.

Q. Were the ends flush and regular?

A. They were pretty well; not altogether; sometimes there would be a plate that would come perhaps this far from the tanks, about a foot, and sometimes right up against the side of the tank.

Q. Did you see any physical evidence of water having run down the sides of the tanks? A. Yes, sir.

Q. What was it?

A. You could see the stains of the water where it had come down.

(Deposition of John Baxter.)

Q. Could you tell whether or not any of this water that had come down had made its way over upon the plates?

A. Yes, sir; you could see where the water had shot right through the plates and struck the edges.

Q. What do you mean by shot right through?

A. If there is a pile of plates and they are piled one on top of the other, it does not matter how close they are together; if a shower of rain even was to strike the edge of those plates, the water would shoot right through between the plates.

Q. How was this cement piled with regard to its distance from the hatch and the ventilator?

A. It was right underneath the hatch.

Mr. HENGSTLER.—Q. Right underneath the main hatch?     A. Half of the main hatch.

Q. The whole main hatch was not over this cement, was it? [187]

A. The bulk had come up through the half of the main hatch.

Q. And the other half was over the coke?

A. The other half was over the coke.

Mr. LILLICK.—Q. Did you examine the coamings of the hatch to see if there was any evidence of water having come through in that way?

A. Yes, sir. It did not show any signs of water coming through the hatch.

Q. Did you see the cement as it was being taken out of the vessel?     A. I did.

Q. What portion of it was damaged, if you know, with regard to the tiers in which it was piled?

(Deposition of John Baxter.)

A. The top tier principally, in the wing.

Q. What was the condition of the cement below the top tier, if you know?

A. It seemed to be in good condition.

Q. Did you examine the cement as it was being taken out of the vessel with reference to whether the barrels which were immediately next to the bulkhead separating the cement from the coke were damaged?

A. Yes, sir.

Q. What was the condition?

A. The barrels were in good condition.

Q. Do I understand you to say, Captain, that it was only the top tier of cement that was damaged by water, and no other portion of it?

A. That is so.

Q. What, if anything, was done during the voyage looking towards ventilation of the vessel?

A. The fore and after hatches were kept off day and night. They were only closed up when we were forced to do so by bad weather; also a hatch at each end of the main hatches, that is, one of the wooden hatches I mean, were taken off every day in fine weather to ventilate the hold. [188]

Mr. HENGSTLER.—Q. That is the main hatch you are speaking of now?

A. Yes, sir. I spoke of the fore and after hatches before. They were kept off night and day, the fore and aft hatch.

Q. And the fore end and after end of the main hatch was taken off in fine weather?

A. In fine weather; that is, at each end over the

(Deposition of John Baxter.)

coke and over the general cargo.

Mr. LILLICK.—Q. Did you do anything after the heavy weather that you had gone through looking towards the ventilation of the cargo, or to see whether any damage had been done?

A. We could not get down below to see if any damage was done.

Q. What did you do with regard to ventilation?

A. As before, we took off the fore and aft hatches.

Mr. HENGSTLER.—Q. You did not act any differently from the way you did before the storm, did you, Captain?     A. No, sir.

Mr. LILLICK.—Q. How did the vessel act during her voyage as to whether she was stiff or cranky?

A. She was neither stiff nor cranky. She was just in beautiful trim.

Q. Did you have to heave to at any time during the voyage?

A. Yes, sir; many times off Cape Horn.

Q. Was the weather in Rotterdam clear or stormy when the vessel was loaded?

A. It was fine weather.

Q. Is Rotterdam a fresh water port or salt water?

A. Fresh water.

Q. Captain, what was the condition of the steel plates in Rotterdam before they were presented for shipment, if you know?

A. The mate signed for them, "more or less rusty."

Q. What do you mean by saying that the mate signed for them as being more or less rusty?



(Deposition of John Baxter.)

A. On the receipt that was presented to the mate he marked "more or less rusty." [189]

Mr. HENGSTLER.—I move that that portion be stricken out on the ground it is not responsive. The question is, what condition were they in when they arrived at your ship and when you put them in. Did you see them yourself? A. Yes, sir, I did.

Q. You saw those steel plates? A. Yes, sir.

Q. You noticed their condition?

A. They were slightly rusty.

Q. Did you mark it so on the bill of lading?

A. I did not.

Q. You did not take any exception to their condition?

A. The bills of lading cover rust, and that was pointed out to me by the *charter's* agent in Rotterdam, and I wanted this clause put on the bills of lading, and they pointed out that clause on the bill of lading, so I signed a clean bill of lading on that account.

Mr. LILLICK.—Q. What was the object, if you know, of the mate's writing anything on the receipt presented to him?

Mr. HENGSTLER.—I object to that question.

Mr. LILLICK.—I will withdraw the question.

Q. You say that it is only because the charterer's agent pointed out to you in the bill of lading the exception with regard to rust that you did not mark upon the bill of lading the condition of the steel plates when they were received by you?

A. Yes, sir; as put forth by the mate's receipts.

(Deposition of John Baxter.)

Q. That is hardly an answer. Repeat the question, Mr. Reporter.

(The reporter reads the question.)

A. Yes, sir.

Q. You saw those steel plates yourself?

A. Yes, sir.

Q. When the vessel was discharged here in San Francisco at the end of the voyage did you notice any evidence of sweat in the vessel?

A. Not in the compartment where the general cargo was stowed. [190]

Q. Did you particularly look to see whether there was any signs of it? A. I did.

Q. Would there have been any evidences on the steel plates of the ship itself had there been sweat in the hold? A. Decidedly.

Q. What would those evidences have been?

A. They would have been all stained.

Q. Were *they* any such stains in the hold?

A. Where the coke was stowed.

Q. There was? A. Most decidedly.

Q. What was the condition of the steel plates of the vessel where the general cargo was stowed and the cement? A. It was perfectly clean.

Q. Did you have a port warden's certificate made out when you arrived?

A. Yes, sir; I engaged a port warden.

Q. I hand you a certificate purporting to be signed by Thomas Wallace, Port Warden, and ask you whether it is the certificate made to you which you refer to? (Handing.) A. Yes, sir.

(Deposition of John Baxter.)

Mr. LILLICK.—I will offer this in evidence and ask that it be marked Respondent's Exhibit "H."

Mr. HENGSTLER.—I object to it as incompetent, irrelevant, and hearsay, and immaterial.

(The paper is marked Respondent's Exhibit "H.")

Mr. LILLICK.—Q. I hand you a letter dated February 22d, 1910, which purports to have been signed by a stevedore at Rotterdam, and ask you whether it is the certificate about which you testified a few minutes ago when you said that the stevedore had certified to the proper stowage of the vessel. (Handing.) A. Yes, sir.

Mr. LILLICK.—I offer it in evidence as Respondent's Exhibit "I."

Mr. HENGSTLER.—I do not think it amounts to much, but at the same time I want to reserve a formal objection to its admission, [191] on the ground that it is irrelevant, immaterial, incompetent and hearsay.

(The paper is marked Respondent's Exhibit "I.")

Mr. LILLICK.—Q. Do you know of any point in which the vessel herself was not seaworthy when she started on the voyage? A. No, sir.

Q. In what condition were her hatches when she started? A. They were all in good condition.

Q. And as to her rigging and tightness and strength?

A. The fact of her having passed a number 3 special survey is sufficient to say that she was in first class—

(Deposition of John Baxter.)

Mr. HENGSTLER.—Do not give your conclusions, but answer the question.

A. Yes, sir, she was in good condition.

Mr. LILLICK.—That is all.

Cross-examination.

Mr. HENGSTLER.—Q. The general cargo in this ship was carried about amidships, was it not?

A. Yes, sir, about amidships.

Q. In the fore part and in the after part of the ship was coke? A. Yes, sir.

Q. I suppose the entire fore and aft part was all filled up with cargo?

A. There was a small space at the fore hatch and a small space at the after hatch that was clear of coke, about 100 tons space at each end.

Q. Was clear? A. Yes, sir.

Q. Then the general cargo filled in a column about amidships of the vessel?

A. About amidships, a little bit abaft, if anything, because that put her by the stern, if anything, on account of the coke.

Q. A little bit abaft from amidships, but not exactly in the middle of the ship?

A. No, sir, a little more aft. [192]

Q. How long was that column fore and aft, how much space was filled up by general cargo?

A. I could not tell you exactly.

Q. About? A. There was about 13 beams.

Q. How many feet is that, Captain?

A. About 50 feet—52 feet.

Q. What is the length of the whole vessel, as far

(Deposition of John Baxter.)

as the hold is concerned?

A. She is 275 feet; that is between perpendicularly. The fore peak has come off from that.

Q. I mean as far as the carrying space is concerned. A. 265 feet.

Q. So there was about 200 feet or a little more of coke, and a little more than 50 feet of that general cargo? A. Yes, sir.

Q. The general cargo filled in the space from wing to wing, did it not? A. From wing to wing.

Q. How high was it stowed? Right up to the deck? Or was there any space between the general cargo and the deck?

A. Right up to the deck, only underneath half of the main hatch there was a small space.

Q. Outside of that it came right up to the deck, did it? A. Yes, sir.

Q. That small space was left just for some one to get down?

A. It was not right up to the deck. You could not get a barrel up there. There might be two feet underneath the deck. You cannot stow barrels the same as you can a sack of wheat.

Q. Was all this cement stowed in the ship consigned to Parrott & Company under this bill of lading in evidence here?

A. All consigned to one party.

Q. All covered by this one bill of lading?

A. All covered by this one bill of lading.

Q. As far as the steel plates are concerned, are they covered by one bill of lading?



(Deposition of John Baxter.)

A. They are also covered by one bill of lading.  
[193]

Q. What other cargo was there besides the cement and steel plates?     A. Steel bars.

Q. To whom were they consigned?

A. To Parrott & Company.

Q. Where were they stowed?

A. One hundred and sixty tons stowed in the between decks; 250 tons right in the bottom.

Q. In the bottom of the hold?

A. In the bottom of the hold; 250 tons right across the main hatch, in the fore part of the mainmast and on top of the plates.

Q. There was no other cargo besides these three items mentioned?

A. That was all that was in the compartment, cement, plates and bar steel.

Q. Do you know where the steel plates were stowed which are here in suit as having been damaged and rusted?

A. Where were they stowed? They were stowed on top of the 250 tons of the bar iron in the lower hold.

Q. All of them?     A. All of them.

Q. I notice that you have marked in your stowage plan 300 tons of such plates, whereas the bill of lading; I think, shows a larger number, does it not?

A. Probably. I made that out from memory.

Q. What did you take from memory?

A. The 300 tons.

Q. It was about 300 or 310 tons?

(Deposition of John Baxter.)

A. Yes, sir. You could see the kilos on the bill of lading.

Q. Now, this general cargo was separated from the coke by bulkheads fore and aft, was it?

A. Yes, sir.

Q. Did those bulkheads come right up against the wings of the ship and up against the deck?

A. Yes, sir.

Q. Tight? A. Yes, sir. [194]

Q. Not real tight, was it? You cannot be so particular as to fitting it right in?

A. It was not dovetailed or caulked.

Q. What kind of a bulkhead was it; what was it made of?

A. It was a white wood but hard. I don't know exactly the name of the wood.

Q. How thick was the wood, Captain?

A. It was either three-quarters or an inch. I could not say exactly. I think it was three-quarters.

Q. It is not one piece of wood, is it—it is boards?

A. Yes, sir.

Q. Boards which are placed side by side?

A. Athwartships.

Q. These boards are not dovetailed, one into the other? A. Not tongue and grooved.

Q. One is fitted on top of the other as well as they naturally fit together; that is all, is it not?

A. Yes, sir.

Q. In other words, these boards are not tight?

A. Yes, sir, they are tight. You could not see daylight through between them.

(Deposition of John Baxter.)

Q. When the cargo is out cannot you see light through them? A. No, sir, you could not.

Q. Are you sure? Have you ever tested?

A. Yes, sir, I have looked. They were lined with mats as well right from the deck to the bottom of the hold.

Q. What kind of mats were they?

A. We call them dunnage mats.

Q. Do they cover the board entirely and every square inch of the board?

A. They cover every part of it.

Q. On both sides of the boards or only on one side?

A. Only on the inside of the bulkhead.

Q. The coke is in bulk right up against the board?

A. Yes, sir.

Q. Did you examine the tanks of the ship before she left Rotterdam? A. Yes, sir. [195]

Q. Did you examine them in reference to whether they leaked or not? A. I did.

Q. Was there any leak? A. No, sir.

Q. None whatever? A. None whatever.

Q. Under whose supervision was the stowage of the vessel made? Under yours or the stevedore's?

A. Under my own supervision.

Q. You are responsible entirely for it?

A. Yes, sir, entirely.

Q. During your experience in carrying cargoes have you ever carried cargoes of coke for this voyage? A. Yes, sir.

Q. How frequently?

A. Since I have been master only once, and that

(Deposition of John Baxter.)

was up to San Francisco in the same ship.

Q. Did she on that occasion carry anything else besides coke, or was she loaded with coke altogether?

A. No, sir. She had pig iron, brick and tombstones.

Q. No steel plates?      A. No steel plates.

Q. All that was material that could not be damaged by any sweat that might come from the coke, was it, on that occasion?      A. I should think not.

Q. You know that coke absorbs moisture very easily, do you not?      A. Yes, sir.

Q. That is full of water when it gets into the ship?

A. I don't know that it is. I have seen them making it.

Q. Did you take any particular precautions in stowing this general cargo by reason of the fact that there was so much coke in your ship, or would you have taken the same precautions if instead of coke there had been anything else in the vessel?

A. No, sir. I would not have taken the precautions I did with the coke if there had been any other cargo.

Q. Why not?

A. When I say any other cargo, it depends on what the cargo is; but with coke I know that coke is liable to sweat, and that is why I took the precaution to have the bulkheads made in such perfect manner. I don't know there was ever bulkheads [196] came into San Francisco in such a perfect condition as ours were.

Q. You were aware when you stowed that coke in

(Deposition of John Baxter.)

Rotterdam that it was necessary to have tight bulkheads between the coke and general cargo?

A. Yes, sir.

Q. And you say those bulkheads were in perfect condition?     A. In perfect condition.

Q. And arrived here in perfect condition?

A. And arrived here in perfect condition.

Q. Did you notice any sweating on the bulkheads after the cargo was taken out?

A. I noticed the mark of a stream about four feet long on the bottom of the mats from the between-decks down, that was in the after bulkhead. Captain Pillsbury, the surveyor for Parrott & Company, was in my company in the hold at the time, and I pointed it out to him.

Q. What did you think that stream came from?

A. I should say from a leak in the deck.

Q. Could you have distinguished whether it came from that, or whether it was sweat coming from the coke, by looking at it?

A. It could not be sweat.

Q. You could not tell the difference, whether it was the one or the other by merely looking at it?

A. Yes, sir, most decidedly I could.

Q. Why.

A. Because it did not show any signs of sweat anywhere else. It was a decided mark of water.

Q. There was no sign of sweat anywhere else, anywhere else in the compartment in which the general cargo was carried?     A. No, sir.

Q. Did you look for it?



(Deposition of John Baxter.)

A. The only places I saw were marks on the tanks.

Q. Did you not see marks of sweat on the steel plates? [197] A. On the cargo.

Q. On the cargo itself?

A. I saw the rust on it, being discharged.

Q. You saw stains on those plates when they were discharged? A. Rust.

Q. Were there not stains too that would show that there was water either salt or fresh that came in contact with them? A. Yes, sir.

Q. Did you notice such stains in any other part of the cargo on the hoops of the casks and barrels of the cement? A. Not the same.

Q. Did you notice any stains on those?

A. The hoops were more or less rusty on the cement, and my surveyor tested 25 of the barrels and found salt.

Q. Did you make any tests?

A. I saw the test made.

Q. What kind of a test was made?

A. With some stuff in a bottle. I could not tell the name of it. Something of silver they call it.

Q. Now, you said that water entered through the decks during the storm that you testified to, did it?

A. Yes, sir.

Q. How did it enter—through the hatches or through the seams?

A. Through the seams of the deck.

Q. How do you know that?

A. I could see the stains on the underneath part of the deck, and also stains on the cement barrels.

(Deposition of John Baxter.)

Q. I thought you said awhile ago you did not see any signs anywhere except the streaks that you noticed in the after bulkhead, didn't you?

A. We were talking about the sides of the cargo and not about the cargo then.

Q. As a matter of fact, there was a great deal of evidence of stains inside of that compartment in which the general cargo was carried, were there not?

A. Do you mean on the bulkhead or the sides of the ship? [198]

Q. All over, bulkhead and side of the ship.

A. No, sir.

Q. Deck?

A. There was evidence of leaks in the deck.

Q. I did not ask you what they came from, but you noticed there were stains on the deck?

A. Yes, sir.

Q. You noticed stains on the bulkheads?

A. On the after bulkhead, yes.

Q. Did you test the stains on the deck as to whether they were salt water stains or stains from sweat? Did you test them?

A. I did not test them. It is wood.

Q. How do you account for the damage to the steel plates and to the cement in this case? Let us hear your opinion. A. Stress of weather.

Q. Stress of weather in what regard?

A. The ship laboring and straining and leaking through the deck, and also through water going down the main ventilator.

Q. Did a more than usual amount of water enter

(Deposition of John Baxter.)

in that way, according to your opinion?

A. Well, no, I don't think so.

Q. Just the usual amount?

A. There is no water enters there unless the ship is in bad weather. When you get in a gale of wind such as we were in it is most unusual.

Q. What I am asking you is this: In your opinion did a more than usual amount of water enter into the hold of your ship through the seams and through the ventilator?

A. Water does not generally enter there at all.

Q. It is not supposed to enter there at all.

A. It is not supposed to enter there at all.

Q. That is what I mean. Therefore, there was more than a usual amount. Does it happen very often that water gets into the interior of a ship through seams?

A. Not unless through stress of weather. If the ship is in a proper sea condition and does not [199] get in bad weather she ought to be tight everywhere.

Q. How about the ventilator? Was the ventilator covered up before the bad weather began?

A. It was covered up—it was covered up when the bad weather began. The sea came over so much that I was frightened that the water would go down below.

Q. Do you think that much water entered through the ventilator? A. I don't think so.

Q. In your opinion, did enough water enter through the ventilator to account for the damage to the steel plates and to the rust on the hoops of the

(Deposition of John Baxter.)

cement barrels and the damage to the cement? What is your opinion?

A. My opinion is that there was sufficient water went down the ventilators to damage the plates in the condition they were. The water that came through the deck damaged the cement.

Q. That is your theory?

A. That is my theory of it.

Q. That the salt water that entered through the ventilators damaged the steel plates, and water entering through the seams damaged the cement?

A. Yes, sir.

Q. How far down into the hold does the ventilator reach? A. Right to the bottom.

Q. Right to the bottom of the hold?

A. Right to the bottom of the ship.

Q. Is that usual?

A. It is usual, yes. For the main deck ventilator it also goes down the pump-well.

Q. If it reaches down to the bottom of the ship, then the bottom of the ship of course is ventilated properly by that? A. Yes, sir.

Q. Now, how about the higher portions of the hold?

A. There is a foot or space between the tanks and the between-deck beams which enters into the space where the ventilator goes down to. It is all open at the top of the tanks. [200]

Q. Anything above that is not ventilated by this ventilator, is it? A. Yes, sir.

Q. In what way?

A. There is one of the deals in the after part of

(Deposition of John Baxter.)

the casing with a hole in it which you can put your fist through, and there are also holes between the top deal in the casing and the main deck.

Q. And those holes is what you rely on for the ventilation of the upper part of the hold?

A. Of the between-decks.

Q. The between-decks is the same thing as the hold of your vessel?

A. It is when there is nothing in it. If the between-decks is full of cargo, the cargo in the between-decks is laid on the between-deck beams and forms a deck.

Q. In this case there was no deck?

A. There was no deckload but there were steel bars.

Q. Did you notice any evidences of seams leaking all over the deck or any particular portion of the deck?

A. She was leaking in several other places where the coke was stowed. The deck was leaking there also.

Q. In what part of the deck was she leaking?

A. There were some leaks in the after part and some in the forward part.

Q. With reference to the parts of the deck which were above the general cargo, where were the leaks in the seams? A. Towards the wing.

Q. Which wing? A. Both wings.

Q. Were there any over in the middle or center of the ship?

A. There was one or two in the center, too.

Q. The leaking seams were all over the deck?



(Deposition of John Baxter.)

A. Pretty well. They seemed to be leaking around about the mast. [201]

Q. The mast is right in the center?

A. Right in the center, yes.

Q. Is it not a fact that most of the leaking was right around the mast? That is the place where most of the water entered?

A. I could not say as to that. I don't think so.

Q. But water did enter that space right around the mast did it not? A. Through the deck.

Q. Did you notice any moisture in any portion of the general cargo, any dampness?

A. No, sir, I cannot say that I did.

Q. When the cargo came out of the hold?

A. When the cargo was coming out?

Q. Yes.

A. No, sir, I cannot say that I did. I did see one or two places that were wet but that was on account of a bucket of water that the stevedore was using. That is the only sign that I saw of any dampness on the plates.

Q. Where was that dampness? On any part of the cargo?

A. On top of the plates where a bucket of water had been discharged that the stevedore was using.

Q. Was that the only evidence of dampness that you noticed in the cargo when it came out?

A. That is the only evidence that I noticed.

Q. No evidence of any salt water there?

A. Only alongside of the tanks.

Q. There was evidence of salt water there?

(Deposition of John Baxter.)

A. Evidence of rust on the edges of the plates and also where the corrosion had shot in between the plates, as I mentioned before.

Q. Did you make a test of those, as to whether it was due to fresh water or salt water?

A. I saw one test made.

Q. I asked you, did you make a test?

A. I did not make a test, no.

Q. Did you read the Port Warden's certificate?

A. I did.

Q. You noticed, did you not, that his report is, all the way [202] through, that a number of barrels of cement were stained, and the hoops were rusted, did you not? A. Yes, sir.

Q. That is correct? A. I noticed the hoops.

Q. You noticed the hoops yourself and you noticed the stains on those barrels?

A. What does he say about the stains?

Q. Stains and hoops rusted?

A. How many does he say? He does not say many.

Q. "Found quite a number of barrels of cement in main hatch in both wings slightly stained and hoops rusted?" A. Yes, sir.

Q. Did you notice those slight stains yourself?

A. I did. That was on the top there.

Q. Those were stains on the barrels themselves?

A. On the barrels.

Q. Not on the hoops?

A. On the barrels. You could not see a stain on a hoop.

Q. You saw those stains yourself, did you not?

(Deposition of John Baxter.)

A. I saw them, yes.

Q. Did you notice any of the rust on the steel when it came out?      A. On the steel plates?

Q. Yes.      A. Yes, sir, I saw it.

Q. Did you notice any signs of sweat in the hold in the neighborhood of where the steel plates were stowed?

A. No, sir; only as I said before, in the tanks I noticed evidence of stains.

Q. That was right next to the steel plates, was it not?      A. Right next to the steel plates.

Q. But those evidences did not extend to the steel plates?      A. Yes, sir.

Q. But there was no evidence on the steel plates?

A. There was evidence of rust and corrosion on the steel plates [203] alongside of the tanks.

Q. You do not know whether that was sweat or salt water?

A. I do. Though I did not test one personally, I was there when it was tested.

Q. You did not test it yourself?

A. I did not test it myself.

Q. You have an opinion as to what it was but you do not really know whether it was sweat or whether it was salt water, do you?

A. This test turns it to the color of milk. In this case it turned to the color of milk when they put the liquid on the rust.

Q. Did you put it on?      A. Not myself.

Q. You were simply told so?

(Deposition of John Baxter.)

A. I was there when they started in, looking on it being put on.

Q. What was that test you saw?

A. A test for finding salt.

Q. What do you use in order to make that test?

A. I don't know the name of the liquid.

Q. You don't know what it is, do you?

A. I don't know the name of it.

Q. What does it do when you use it as a test in the case of salt water?    A. It turns it the color of milk.

Q. If it is not salt water what then?

A. It remains the color of water.

Q. Have you ever used that test yourself in any case?    A. No, sir.

Q. You never have?    A. No, sir.

Q. In this stowage plan I notice there is a line drawn here some distance below the main deck.

A. That is the between-deck beams.

Q. This line here (pointing).    A. Yes, sir.

Q. That is the between-deck beams?

A. Yes, sir.

Q. Is not this the between-deck beams (pointing)?

A. No, sir. This is the main deck. [204]

Q. Then the line which I point out is the main deck?

A. That line you are pointing to is the main deck.

Q. I have forgotten whether I asked you,—the coke did not come right up to the main deck, did it?

A. Yes, sir.

Q. Right up to the main deck?

A. Yes, sir, in some places.

(Deposition of John Baxter.)

Q. But against the bulkheads did it come right up to the main deck, or was there a space left between the coke and the main deck?

A. It came up to about the main deck beams.

Q. Are you sure about that? A. Yes, sir.

Q. How about the coke in the after end?

A. It was the same.

Q. Did it come right up to the main deck beams?

A. Yes, sir, up to the barrels. You can stow a ship with coke right up to the deck. That would be impossible, unless you threw piece by piece in.

Q. I thought there must be some space left.

A. Yes, sir.

Q. Did the bulkhead dovetail into the beams?

A. No, sir. The after bulkhead went right up to the main deck on the after part of the beams. The beam was immediately in the fore part of the bulkhead, and the forward bulkhead came up to the main deck in the fore part of the beam. The beam was immediately up against the bulkhead.

#### Redirect Examination.

Mr. LILLICK.—Q. If the middle portion of the hold where the general cargo was had been sweaty would there have been any signs of sweat on the coamings and the beams?

A. It would have shown decidedly on the coamings and the beams.

Mr. HENGSTLER.—Q. Do you mean the hatch coamings? A. I mean the hatch coamings.

Mr. LILLICK.—Q. Was there any evidence of sweat? A. None whatever. [205]



(Deposition of John Baxter.)

Q. Did you examine for it?

A. Every time we took off the main hatch.

Q. Did you see any signs of sweat at any time?

A. I did not see any sign at any time.

Q. Did you examine while the vessel was being discharged?     A. I did.

Q. Was there any evidence of sweat then?

A. Where?

Q. On the coamings and the beams in the portion of the vessel where the general cargo was stowed.

A. No, sir.

Q. Do you mean you saw no evidence of sweat?

A. I saw no evidence of sweat.

Q. Did you examine the sides of the ship where the general cargo was stowed while it was being discharged and after it was discharged to see whether there were any evidences of sweat on it?     A. I did.

Q. Were there any evidences of sweat?

A. There were none.

Q. In your opinion had there been any sweat in that portion of the hold would that have shown on the sides of the vessel?     A. Yes, sir.

Q. When you examined the tanks before you left Rotterdam did you look to see whether there were any signs of water streaks down?

A. The stringer boards that go around the tanks were taken down, and the tanks were scraped and painted in Rotterdam outside.

Q. And when the vessel arrived here in San Francisco there were streaks?     A. Most decidedly.

Q. Down the sides of the tanks?

(Deposition of John Baxter.)

A. There were.

Q. Could you tell whether those streaks of water were from sweat or from salt water?

A. I did not test it on the tanks. No fresh water could get there.

Q. There could have been fresh water there if the ship had sweated?

A. If she sweated, yes; it would also have shown on the [206] sides of the ship.

Q. Were those streaks of water that were on the tanks streaks that could have come from sweat?

A. No, sir.

Q. In your opinion what were those streaks?

A. Salt water.

Q. Captain, if there had been any sweat in the portion of the hold where the general cargo was, would there have been sweat marks on the steel plates all through that portion of the hold?

A. I should say so.

Q. Did you examine the plates as they came out of the vessel to see whether the rust marks were distributed generally over the plates? A. Yes, sir.

Q. Was it all over the plates, or where was it, on what portion of the plates?

A. Mostly abreast of the tanks.

Q. And on what portion of the plate itself, speaking of the edge or the main portion of the plate?

A. Mostly on the edge.

Q. Do sweat marks on the wood of the lower portion of the deck have any different appearance from marks left by salt water?

(Deposition of John Baxter.)

A. The wooden deck would not sweat. It would not show any signs of sweat.

Q. These holes that you mentioned that you could put your fist through, as describing the ventilation portion of the ship, did they go through from the bulkhead where the general cargo was stowed into the portion of the hold where the coke was?

A. No, sir.

Q. Explain how.

A. This casing went around the top of the tanks in the pump-well. It was about 20 feet from the bulkhead where the coke was stowed.

Q. You have testified that the seams leaked more around the mast of the vessel than they did from the other portions of the deck. Where were the steel plates stowed with reference to the mast? [207] Were any of the steel plates up next to the mast?

A. Yes, sir.

Q. Did you notice while the cargo was being unloaded as to whether the rust marks were more pronounced on those portions of the steel plates about the mast and next to the water-tanks, or over in the wings below the general cargo?

A. They were more pronounced amidships by the mast and the tanks.

Q. I understood you to testify that the moisture was not very pronounced through the general cargo. If there had been sweat in the compartment where the general cargo was stowed would it have been equally distributed in your opinion? A. Yes, sir.

Q. There would have been just as much sweat over

(Deposition of John Baxter.)

near the edge of the wing as there would in the middle of the hold?     A. Most decidedly.

Q. When the stevedores filled that bucket of water on the plates as the vessel was discharging, was the water wiped up, or what was done about that?

A. They let it run. You could not wipe it up. It immediately ran off and ran down amongst the plates.

Q. In testifying in regard to the steel plates themselves, you were asked the question whether there were any sweat marks on the plates. Do you mean us to understand that the rust that was on the plates was in your opinion sweat marks?     A. No, sir.

Q. That stowage plan, though, you say was made from memory, is approximately, Captain, is it not?

A. Yes, sir.

Recross-examination.

Mr. HENGSTLER.—Q. Did you say that you examined the hatch coamings with reference to sweat?

A. I did.

Q. And you did not find any sweat on them?

A. None whatever.

Q. Did you examine all of the hatch coamings?

A. I did.

Q. All through the ship?

A. All through the ship.

Q. How many hatches are there?

A. Three. [208]

Q. Three hatches?     A. Three hatches.

Q. And in none of them you discovered sweat on the coamings?

(Deposition of John Baxter.)

A. I could discover some sweat on the fore and after hatches after they were battened down in bad weather.

Q. You discovered some then? A. Some.

Q. Tell me how you discovered it. When the hatches are battened down you are not under there.

A. I mean when they were opened after they are battened down.

Q. I mean after arrival here in port and when the cargo came out you did not discover any evidence of any sweat at all on the hatch coamings?

A. No, sir.

Q. Not on any of them? A. No, sir.

Q. Not in the fore and after hatch or the main hatch? A. No, sir.

Q. Did you examine the hatch coamings in port with reference to discovering sweat marks on them?

A. I examined the hatches. I was not looking especially for sweat, but there was none.

Q. In any of them? A. In any of them.

Q. Did you examine the hold of the ship where the coke was stowed along the sides and the wings of the ship with reference to sweat marks? A. Yes, sir.

Q. Did you see any?

A. Yes, sir, you could see the marks of the coke up against the ship's side.

Q. What kind of marks were they?

A. They were made of paint, very dirty looking.

Q. What is she, an iron ship? A. Steel.

Q. The sides of steel? A. Yes, sir.

Q. The sweat shows very plainly on that?



(Deposition of John Baxter.)

A. Yes, sir, because she was all fresh painted to go through the survey.

Q. Do you say that the deck was not steel?

A. It is not steel. It is pitch pine. [209]

**[Deposition of John Owen, for Respondent.]**

JOHN OWEN, called for the respondent, sworn.

Mr. LILLICK.—Q. State your name, age and occupation.

A. My name is John Owen; age, 60; occupation, chief officer.

Q. Are you a master mariner?

A. Yes, sir; master mariner.

Q. How long have you been going to sea?

A. I have been going to sea 48 years.

Q. During that time have you been on sailing vessels entirely?

A. Sailing vessels all my lifetime; on nothing else.

Q. How long have you been on the "Dolbadarn Castle"?

A. About nine months.

Mr. HENGSTLER.—Q. This is your first voyage?

A. This is my first voyage. I joined her in Rotterdam about two months before she left.

Mr. LILLICK.—Q. How many times have you gone around the Horn?

A. I could not tell exactly. You could not count them on your fingers and toes, anyhow.

Q. Just say how many times.

A. Two dozen anyway; but I cannot tell you exactly.

Q. How did the weather on this trip that you have

(Deposition of John Owen.)

just ended, from Rotterdam, comparè with the weather that you have experienced down there on other voyages?

A. I experienced just as bad weather this time as ever I did; worse, if anything.

Q. What was the condition of the vessel before she left Rotterdam as to being tight and well equipped and staunch? A. Good.

Q. How did she act on the voyage as to being stiff or cranky? A. She behaved very well, stiff.

Q. What do you mean by stiff?

A. Neither too tender nor too stiff.

Q. From your experience you can tell whether a vessel is properly stowed by how she acts in a heavy wind or heavy sea, can you not? [210]

A. Yes, sir.

Q. What is your opinion as to the manner in which the vessel was stowed?

A. She was properly stowed.

Q. Did you examine the caulking of the deck before she left Rotterdam?

A. No, sir. But the vessel went through a No. 3 survey there.

Q. You examined the deck of the vessel after she was discharged, did you not, Mr. Owen?

A. Yes, sir.

Q. To see whether there were any evidences of leaking seams, did you not? A. Yes, sir.

Q. What was the condition of the deck?

A. We found that it had been leaking. And the carpenter tried as well with the mallet and found

(Deposition of John Owen.)

some plates rather soft and the vessel was strained by laboring, I think, at sea.

Q. What evidence was there on those seams of water having come through?

A. You could see it underneath the deck on the iron plates and things; underneath the wood you could see the marks.

Q. Did you look at the side where the general cargo was stowed in the middle of the boat to see whether there were any evidences of sweat?

A. Yes, sir. There was no evidence of sweat there.

Q. Did you look?      A. Yes, sir.

Q. Did you look at the water-tanks to see whether there were any water marks on them after the vessel was discharged?

A. No, sir, I did not. It might have been that water might have gone through.

Q. I understand you you did not look?

A. I did not look; no. The tanks did not leak or nothing like that. You do not mean that, do you?

Q. If there had been salt water coming from above and running down the side of the tanks, I am asking you whether there were any [211] marks on the tanks to show if any salt water had come down.

A. You could see the marks on the plates, and that is the only thing that I seen.

Q. You were down there while the vessel was being discharged, were you not?

A. Yes, sir—not all the time, but most of the time I was down there; up and down.

(Deposition of John Owen.)

Q. Did you see any marks on the plates as they came out of the vessel? A. Yes, sir.

Q. Where were the marks on the plates with reference to their edges or their sides, or all over the tops?

A. You could see it on the edges where it will show against the tanks; there was wood up and down the tanks, three inches of wood there.

Q. Did you look at the cement as it came out of the vessel?

A. Yes, sir; I seen it all on the quay there, along the wharf.

Q. Do you know, Mr. Owen, whether the cement was damaged at any place other than on the top row or top tier of the barrels? A. No, sir.

Q. Do you mean that it was or that it was not?

A. There was no damage nowhere else, only on the top tier.

Q. Did the seams which you saw evidencing leaks appear to be above where the cement was, or were they in other parts of the vessel?

A. Over where the cement was.

Q. Did you see any water spilled on these plates down there at any time during the time they were being discharged?

A. Yes, sir. I saw some spilled there by the stevedores, drinking water.

Q. How much was there?

A. Not much, a bucket or two perhaps.

Q. How did that happen?

A. It capsized. They had a bucket of water there to drink and some of *there* would kick it or something

(Deposition of John Owen.)

and they would capsize it.

Q. Who attended to the ventilators coming out?

A. I did, as a rule, and the carpenter. [212]

Q. Do you know what was done as to opening them and closing them? A. Yes, sir.

Q. What was done?

A. I had to cover them at times in bad weather to keep the water from going down, cover them over at the mouth.

Q. Do you know whether the main ventilator was open at any time during heavy weather?

A. Oh, yes, it was opened, and of course water might have gone down before we covered them.

Q. Do you know whether any did?

A. I could not swear that it did no more than I see the marks of it on the plates there, more so there than anywhere else.

Q. You say you did see marks under the ventilator? A. Under the ventilator.

Mr. HENGSTLER.—Q. You saw marks on the plates under the ventilator, did you?

A. Under the ventilator.

Q. You do not know what these marks were caused by, do you?

A. No, sir. They were caused by water, anyway.

Q. How do you know that?

A. They looked like it. I should think they were anyhow.

Mr. LILLICK.—Q. Do you know whether those marks ran down on the water-tanks as far as where the steel was stowed?



(Deposition of John Owen.)

Mr. HENGSTLER.—I object to that because he has not spoken about marks on the water-tanks at all.

Mr. LILLICK.—I withdraw the question.

A. On the plates. The water-tanks are covered.

Q. Where were those plates?

A. They were stowed alongside of the tanks.

Q. Then by saying you saw the marks of the water on the plates, you mean the steel plates that were stowed on board and not the plates of the vessel?

A. The steel plates.

Q. Those steel plates were where, with reference to how that [213] ventilator opened?

A. Where the water would run down; if any water went down the ventilator it would go right through there and run down the side of the tank and run right on to those plates.

Q. Were you on the vessel when the steel plates were received in Rotterdam? A. Yes, sir.

Q. Did you see those steel plates before they went into the vessel? A. Yes, sir.

Q. Were they in good condition?

A. They were more or less rusty.

Q. Did you look at them?

A. Yes, sir; I kept tally of them.

Q. Do you know anything about the rust upon the plates?

A. Yes, sir, I *notified* it on the ship's notes, on the notes that I gave for the cargo.

Q. To whom did you give those notes?

A. To the clerk of the firm that owned it. The

(Deposition of John Owen.)

man that was there keeping tally, he asked me for them.

Q. What did you put on those notes?

A. "More or less rusted."

Q. How many plates were in that condition, if you know?     A. I could not tell that.

Q. You saw the plates when they came out in San Francisco, didn't you?     A. Yes, sir.

Q. What was their condition with reference to rust here in San Francisco and their condition in Rotterdam before they were received?

A. They were worse in 'Frisco a great deal.

Q. Do you know whether rust that is from salt water is of a different color from rust from fresh water?     A. I do not.

Q. You do not know?     A. No, sir.

Q. Do you know from the experience you have had on vessels whether if that hold where the general cargo was stowed—and by that I mean the cement—had been sweated, whether the cement all through the hold would have been affected by it or not?

A. No, sir; that part was not. [214]

Q. Repeat the question, Mr. Reporter.

(The reporter reads the question.)

A. The whole lot would have been affected by it if it had been sweated.

Q. What divided the coke from the general cargo?

A. A bulkhead.

Q. Anything else besides the bulkhead?

A. Matted over.

(Deposition of John Owen.)

Q. What condition was the bulkhead in as to being tight or not?

A. Tight and in good condition. The carpenter made it and it was a very good bulkhead, both aft and forward, and all matted inside between it and the general cargo again.

Q. In your opinion, was the coke and the cement stowed properly or improperly?

A. In my opinion they were properly stowed.

Cross-examination.

Mr. HENGSTLER.—Q. Mr. Owen, if salt water gets into the hold of a ship what is the evidence of its having reached the inside?

A. You will see the marks of it.

Q. And if there is sweat inside, what is the evidence of that?

A. You could see sweat there all the time. Sweat is a thing that you have to wipe out, I think. It is not like a dripping.

Q. What is the difference between the evidence of salt water and the evidence of sweat, as far as you understand it?

A. I should think if it was sweat it must affect the whole lot. It would not affect this part of it and leave this clean (illustrating), but a leak might have gone in here and not affect this part.

Q. So your opinion is that the damage in this case was caused by a leak, is it?

A. By salt water, yes; by sea water, somehow.

Q. And the reason for your opinion is because the evidence of dampness is confined to single spots?

(Deposition of John Owen.)

A. To a single spot. When [215] one part of the thing is dry and the other part is wet, it must be a leak, or water going down—I do not say a leak, but water going down.

Q. That is the reason for your opinion?

A. Yes, sir.

Q. Did you examine the hold of this ship while the cargo was being removed here in San Francisco?

A. Yes, sir; I was down there more or less.

Q. Did you in any part of her find any evidence of sweat? A. No, sir.

Q. Did you look for sweat inside of the vessel?

A. I looked for sweat in this part, but of course the other part of the ship you could not go through until the general cargo was out. The coke was filled right up.

Q. After the coke was taken out did you notice whether there was any sweat in that part of the ship?

A. No, sir, I did not see any evidence of sweat there nowhere.

Q. Not in any part? A. No, sir.

Q. Your ship passed through the equator twice on the way here, did she not? A. Yes, sir.

Q. Now, with reference to the marks which you noticed on the steel plates, they were all near the ends of the plates?

A. On the edges of the plates, yes; either the edges or the sides, I did not notice which it was, which were stowed against the tanks.

Q. Were those the edges that were towards the coke or the edges away from the coke?

(Deposition of John Owen.)

A. Away from the coke, against these tanks.

Q. The edges that were against the tanks?

A. Yes, sir.

Q. Did you examine the whole plates?

A. The edges of the plates were not near the coke at all. There were steel rods underneath them, and they were nearer to the bulkhead of the coke than the plates. [216]

Q. Did you see any marks on those plates in any parts of them which were not near the edges?

A. I seen some rust on them.

Q. No other parts? A. No other parts.

Q. Did you see any marks on some of them all over the plates?

A. Yes, sir; water dripping on the edge it would naturally work in underneath and would run all over the plate.

Q. That is simply your theory, is it not, of how they got marked?

A. Yes, sir, of how they got marked.

Q. But they were marked all over, were they not?

A. Some of them, yes.

Q. We do not want your theories, we want the facts here.

A. I did not look at every plate as it came out of the ship.

Q. You noticed the damaged cement barrels, did you?

A. Yes, sir, I noticed there were marks of water on some of the top tiers of the cement.

Q. Are you prepared to say that all the damaged



(Deposition of John Owen.)

ones were on top and there were none that were damaged on the lower tier?

A. No, sir, I am not prepared to say that, but that is all that we noticed, to take any note of at all, was the top tier.

Q. You did not look for the damage on the other ones, did you?

A. No, sir, because they did not show any sign of it.

Q. Did you look to find out which ones of these barrels were in fact damaged?

A. The top tier was all that I see.

Q. Did you not see some barrels that were damaged and that were not on top?

A. No, sir, I did not.

Q. None whatever, did you?

A. None whatever.

Q. How many tiers high was the cement stowed?

A. About five. We had some on the between-decks and some in the lower hold.

Q. The one in the between-decks, how many tiers high was it stowed?

A. About five, I think; I would not say exactly. I think about five tiers. [217]

Q. You did not pay any attention to that?

A. No, sir, not much.

Q. The only thing you paid attention to was this question of moisture, was it not? A. Yes, sir.

Q. You did not care how otherwise the cargo was stowed, did you?

A. Yes, sir; I know how the cargo was stowed,

(Deposition of John Owen.)

but I did not know exactly the height of the tiers of cement. I know how it was laid in the ship all right.

Q. What was it laid on?

A. Iron was underneath.

Q. In the between-decks? A. Yes, sir.

Q. Underneath in the between-decks?

A. Yes, sir; and some on top.

Q. What was the iron stowed on?

A. On the beams.

Q. What was under the beams?

A. In the lower hold?

Q. Yes. A. Cement.

Q. How many tiers?

A. Two or three tiers anyway, if not more; I don't know; I could not say how many tiers there were.

Q. Could it not have been six or seven?

A. There were 500 tons of it altogether, were there not? (Addressing the captain.)

Q. Do not ask. Tell us what you know about it.

A. I am telling you that I don't know how many there were.

Q. There might have been six or seven?

A. There might have been.

Q. You paid no attention to the stowage except with reference to the damage by moisture, did you?

A. Yes, I paid attention as to it but I did not count the height of the tiers of cement.

Q. Is it not a fact that you know all about this moisture because you and the captain have discussed that together? A. What is that?

(Deposition of John Owen.)

Q. Is it not a fact that you know all about this moisture because you and the captain have been talking about that before you came in here?

A. No, sir; no more than the ship was properly ventilated. [218] We knew that, that we had to keep all the ventilation we could to keep it from sweating.

Q. And she did not sweat at all?

A. Not to my knowledge, she did not.

Q. Not in any part of her?

A. Not to my knowledge.

Q. Are you prepared to swear you did not see any sweat in any part of her? A. Yes, sir.

Q. Where did you notice the leaks in the deck above the cement and in what part of the deck, on the sides or near the mast, or in both places, or where?

A. Around the mast, most, on each side of the mast.

Q. Did you notice any seams that leaked in any other places on the deck?

A. No, sir, only around there, around the hatch, the main hatch and the mast.

Q. How far down into the hold does that main ventilator reach?

A. The ventilators only go through the upper deck and then go right down to the hold altogether, because we have only the one deck; it is an open ship.

Q. It goes right down through the between-deck beams into the lower hold? A. Yes, sir.

Q. And down into the lower hold how deep; right down to the bottom? Does it reach right down to the bottom?

(Deposition of John Owen.)

A. No, sir. If it reached right down to the bottom it would not be a ventilator at all.

Q. That is what I mean. It reaches right down to the bottom?

A. No, sir. It would not be a ventilator at all if it reached down to the bottom.

Q. Tell me how far down it reaches.

A. Only through the main deck and then it went all over the hold just the same as if there was a hold there.

Q. Do you know what the diameter is of the ventilator? [219]

A. No, sir, but I can go through it.

Q. About? What is your idea?

A. It must be 15 inches though, I think, or more.

Q. How did the rust on the steel plates after they came out of the ship here in San Francisco compare with the rust which you noticed on them in Rotterdam?

A. They were more like rust when they came out here than what it was in Rotterdam, more rougher.

Q. There was a great deal more? A. Yes, sir.

Q. Your idea is that the damage was produced by salt water coming in?

A. By salt water coming through the deck or through the ventilators. The water might have gone through the ventilator. I could not say that I see water going through there.

Q. How can you tell whether it is salt water or whether it is sweat?

A. I cannot tell but I see them testing it. I seen

(Deposition of John Owen.)

a man testing it down below in the hold.

Q. You saw a man testing it?      A. Yes, sir.

Q. Did you understand the test?

A. No, sir, I did not.

Q. That man told you that it was salt water, did he?      A. Salt water, yes.

Q. That is all that you know about it?

A. That is all I know whether the rust was from salt water or anything else, and if it was anything else, any sweat or anything like that, it would affect the whole lot that was in that compartment as well as the other.

Q. It would only affect the outside, would it not? It will only affect those portions of it which are on the outside and which are exposed to it?

A. I suppose so, but they were all exposed more to it than the steel plates, because everything was on top of the steel plates.

Q. If there are a number of barrels of cement then only the ones [220] which are on the outside of the tiers are the ones that would be exposed to the sweat or would be more exposed to the sweat than the ones on the inside?

A. I should think the ones along the side of the ship would be more exposed.

Q. Did you not find, as a matter of fact, that there was more damage done, more rust on the hoops of the barrels along the side of the ship than on the barrels in the inside?

A. No, sir; the other way. The barrels that I see there that came about halfway between, or more than



(Deposition of John Owen.)

that, about halfway between the ship's side and the amidships.

Q. Those were damaged the most? A. Yes, sir.

Q. Did you notice whether the ones along the wings of the ship were damaged at all?

A. No, sir, I did not see any damage there.

Q. Did you notice whether the hoops on them were rusty?

A. The hoops were a little bit rusty, more or less, on all of them.

Q. Were not the steel plates also rusty more or less all the way through? A. Yes, sir.

#### Redirect Examination.

Mr. LILLICK.—Q. When a hold is full of sweat, what is the condition of the air in that hold?

A. It must be very close or foul I should think.

Q. Is the atmosphere, do you know, charged or not charged with water?

A. It must be with water, I should think.

Q. Have you ever been in a vessel that has had its cargo damaged by sweat? A. Yes, sir.

Q. Do you know whether sweat goes all through wherever there is a place for the air to go, whether the sweat goes too? A. What do you mean?

Q. Do you know when a hold of a vessel has sweat in it whether it goes all through wherever the air can go?

A. The damp air [221] goes right through it, in my experience.

Q. Then wherever there would be a place for the air there would also be a place for the dampness?

(Deposition of John Owen.)

A. Yes, sir.

Q. Did you go into the hold of the vessel where the coke was stowed after the coke had been discharged? A. Yes, sir.

Q. Did you look particularly to see whether there was any sweat in there? A. Yes, sir.

Mr. HENGSTLER.—Q. And you did not find any?

A. I did not find any appearance of it at all.

Mr. LILLICK.—Q. Do you know whether there is any difference in the color of a stain made by sweat on iron, and the color of a stain made by salt water?

A. No, sir. I do not know that I do.

(By consent an adjournment was here taken until to-morrow, Friday, September 16, 1910, at 3:30 P. M.)

Friday, September 16th, 1910.

**[Deposition of Jan Olsson, for Respondent.]**

JAN OLSSON, called for the respondent, sworn.

Mr. LILLICK.—Q. What is your name, age and occupation?

A. My name is Jan Olsson; I am 29 years old; occupation, ship's carpenter.

Q. How long have you been going to sea?

A. 13 years.

Q. When did you join the "Dolbadarn Castle"?

A. In Rotterdam.

Q. Just before the voyage from which you have just arrived?

A. A couple of days before we sailed, and I had been on board two [222] months before she

(Deposition of Jan Olsson.)

sailed, so I had been on board altogether nine months.

Q. What do you mean by that?

A. The two days before New Year's Day I went on board the "Dolbadarn Castle" and worked on board for two months before I signed on the articles.

Q. Were you on board when they made a survey of the vessel before she left Rotterdam?

A. Yes, sir.

Q. Were you there when they tested her decks?

A. Yes, sir.

Q. What did they do?

A. They took an iron chisel and tried the seams.

Q. As ship's carpenter, was that part of your duty?

A. I was along with them and I gave them a hand. The places they wanted to try I helped them try, so as to see that everything was right.

Q. Was it a part of your duty before the vessel left Rotterdam to see whether the deck was in proper shape and the seams sound and not leaking?

A. Yes, sir; everything was all right.

Q. Did you go over the deck yourself?

A. I went over the deck myself too.

Q. Was it all right?      A. It was all right.

Q. Did you test it in any way with water to see whether it leaked?

A. I see all the seams and what I think about we tried.

Q. What do you mean by what you think about?

A. I took a chisel and took one seam there and

(Deposition of Jan Olsson.)

another seam there and another seam there again. It would take too long to take all the seams.

Q. Were they sound and water-tight?

A. Yes, sir, they were water-tight.

Q. Did you go down below at any time before the vessel was loaded? A. Yes, sir.

Q. Did you wash down the decks with waters before the vessel was loaded? A. Yes, sir. [223]

Q. Did you ever go below after the deck had been washed down and look to see whether the seams had leaked?

A. Yes, sir; and there was no leak at all.

Q. There was no leak at all?

A. No leak at all.

Q. Whose duty was it after the vessel left Rotterdam to look to see whether the ventilators were closed or open? A. The ventilator was open.

Q. Whose duty was it after the vessel left Rotterdam to look to see whether the ventilators were closed or open? A. It was mine.

Q. How often did you look at them?

A. Every day.

Q. Were they left open or were they closed during fine weather?

A. Open all the time in fine weather, fore and aft hatches, and sometimes the main hatch was open in dry weather.

Q. Was it your duty to look after the hatches too?

A. Yes, sir, it was my duty and I do it too.

Q. What was done when the weather was stormy?

A. We had to batten them down when she started to ship water.

(Deposition of Jan Olsson.)

Q. What was done about the ventilators in stormy weather?

A. They were covered up with canvas covers.

Q. What kind of weather did you have on the voyage? A. Bad weather; hell of bad weather, too.

Q. What was the condition of the deck with regard to shipping seas on this voyage?

A. Oh, yes, we shipped heavy water all the time in bad weather.

Q. Were you on deck at the time when the bell was washed overboard?

A. No, sir; it was not on my watch; it was in the night.

Mr. HENGSTLER.—Do not put such leading questions. I am willing to stipulate that they will all testify that it was the worst storm that was ever experienced, because I have never seen a crew that did not have that experience. They always have the worst [224] storm that ever happened.

Mr. LILLICK.—Q. Were you ever on deck when the vessel was shipping water? A. Certainly.

Q. How many times during this voyage, if you remember, did the vessel ship water?

A. I don't remember that; I don't know how many times.

Q. As I understand you, it was your duty to open and close the hatches? A. Yes, sir.

Q. During the fair weather that followed the storm around the Horn, did you have occasion to go below at any time? A. No, sir, I never did.

Q. After the heavy weather did you look to see



(Deposition of Jan Olsson.)

whether any water had gone through any of the hatches or around the coamings of the ship?

A. No water went down there.

Q. No water went down there? A. No, sir.

Q. You looked for it, did you?

A. Yes, sir. No water went down there.

Q. What with regard to the ventilator?

A. There were two ventilators forward,—two aft, and one main.

Q. Do you know whether at any time during that voyage any water went down any of those ventilators?

A. No, sir. I never seen any water go down any of the ventilators.

Q. Do you know where the water tanks are on board of the vessel? A. Yes, sir.

Q. Can you see the tops of those water tanks from the main hatch when the hatch is off?

A. No, sir—yes, if the ship is light and no cargo, you can see the tanks from the hatch.

Q. But when she is loaded as when she was on this voyage? A. You cannot see the tanks.

Q. Why not? A. There is cargo. [225]

Q. Cargo on top?

A. No, sir, not on top. The tank is in the after part of the mainmast. The cargo goes all around the tanks.

Mr. LILLICK.—Q. During this voyage did you notice at any time any water below the deck?

A. Yes, sir; after coming here and the cargo was out.

(Deposition of Jan Olsson.)

Q. After you had come here and the cargo was out? A. Yes, sir.

Q. Did you notice any water there before you arrived here in port?

A. No, sir, I never looked for it.

Q. Could you see the portion of the deck directly under the main ventilator during the voyage here after the main hatch had been taken off?

Mr. HENGSTLER.—I do not understand that question myself.

Mr. LILLICK.—Read the question, Mr. Reporter.  
(The reporter reads the question.)

A. No, sir.

Q. Do I understand you to say that you did not see any water below the deck during this voyage at any time?

A. No, sir, but after we came in and got the cargo out I could see there was water coming in, and ten days after we had bad weather I see wet on top of the tank. I don't take any more notice of it, but it was wet.

Q. Where was that water with reference to any opening through which it might have come?

A. I don't know.

Q. Was the portion of the tank which you say was wet beneath the main hatch? A. No, sir.

Q. Where was it upon that tank that you saw the water?

A. It was through the ventilator. I went down through the ventilator.

Q. You went down through the ventilator?

(Deposition of Jan Olsson.)

A. Yes, sir. There is no other way to go down and look at the pump which is down there in the fore part. In the fore part of the fresh-water tanks is the [226] pump for the bilges.

Q. Is it part of your duty to take care of that pump, is it?

A. Yes, sir, that is mine; I have to look out for the pumps.

Q. How often have you to go down there?

A. I can sound the ship from the top of the deck, and sometimes I have to go down three or four times in the passage.

Q. You went down through the ventilators, you say? A. Yes, sir.

Q. Where was the water that you saw down there?

A. The ventilator led right on top of the fresh-water tanks and when you came down on top of the fresh-water tanks I could see this wet there.

Q. Did you look at the water that was on the tank to see whether it was fresh water or salt water?

A. I don't know whether it was fresh or salt.

Q. You did not make any examination?

A. No, sir.

Q. Had the water run off the tank in any way, do you know?

A. I don't know if it was running anywhere or nowhere.

Q. After you had got into port did you make an examination of the hold?

A. No, sir. I did not go down in the hold before the cargo was out.

(Deposition of Jan Olsson.)

Q. After the cargo was out?

A. After the cargo was out I went down.

Q. Did you look at the deck?      A. Yes, sir.

Q. Did you see whether the seams had been leaking or not?      A. Yes, sir.

Q. Had they been leaking?      A. Yes, sir.

Q. What evidence was there of their having leaked?

A. There was some in the main and some in the wings.

Q. What do you mean by "in the main"?

A. In the middle of the ship, the mainmast. [227]

Q. Where were the other seams?

A. In the wing.

Q. How could you tell that they had leaked?

A. I can see the mark of the water coming through the seam. There was rust. They looked rusty. You can see the wet coming through the seam.

Q. How far apart are the seams?

A. From forward right aft.

Q. How far apart is each seam from the other running athwart ships?      A. Four-inch plank.

Q. Were there any evidences on the deck there underneath to show whether the water that had come through had come through in a sufficient amount to run from one seam to the other?

A. No, sir. Sometimes the water that comes from the seam runs over three or four seams and across them.

Q. After the vessel had been discharged did you examine the hold at all where the cement had been

(Deposition of Jan Olsson.)

stowed?     A. No, sir.

Q. Do you know anything about whether the hold in which the hold was stowed had sweated it?

A. No, sir, I did not look for it.

Q. You did not look for it?     A. No, sir.

Q. Where were you when the cement was discharged?     A. In Rotterdam?

Q. In San Francisco; where were you in San Francisco when the cement was discharged—on the wharf, or deck or down in the hold?

A. I was on the dock.

Q. Did you see whether any of the barrels that held the cement were rusty when they came out?

A. Yes, sir.

Q. Do you know whether the first cement that came out was as the last cement that was taken from the vessel?

A. Yes, sir; the first cement that came out was more rusty than the last.

Q. Was the last that come out rusty?

A. The first cement that came out was more rusty than the last.     [228]

Q. Were you there during all the time that the cement was discharged?

A. I was on deck all the time.

Q. You were on deck all the time?

A. All the time.

Q. What do you mean by the cement being rusty? Are you talking about the hoops, the barrels, the staves, or what?     A. The hoops.

Q. Do you know whether the hoops of all of the



(Deposition of Jan Olsson.)

barrels that came out of that hold were rusty?

A. I don't know. I did not take notice of them like that.

Q. After the vessel had been discharged, was anything done in the way of going over the seams?

A. Yes, sir; I went over the seams.

Q. How did you find them?

A. Some seams were slack, and I had to caulk them with oakum.

Q. Do you know from the examination you made whether the seams were leaky or not?

A. I take the examination from seeing them below, from inside, I could see water there.

Q. But from the top?

A. No, sir, I could not see it.

Q. You could not tell from the top?

A. I could not tell from the top.

Cross-examination.

Mr. HENGSTLER.—Q. How long have you been a ship carpenter, Mr. Olsson?

A. I have been a ship carpenter 10 years.

Q. How long was this ship in the port of Rotterdam before she left on her voyage?

A. I don't know how long she was in Rotterdam.

Q. You signed just about two days before she left, did you? A. Yes, sir.

Q. But you say you worked on her for two months?

A. Yes, sir, for two months.

Q. All the time or only once in a while?

A. All the time.

Q. In what capacity? As carpenter or what?

(Deposition of Jan Olsson.)

A. Carpenter.

Q. As carpenter? A. Yes, sir. [229]

Q. Were you the only carpenter there at the time?

A. Yes, sir. I was alone there.

Q. Why didn't you sign two months before she left if you were the carpenter?

A. I wanted to try the ship before I signed on her.

Q. Are you sure that you were working on her for two months before you signed?

A. Not sure about the day, but I was working about two months.

Q. Steady? A. Steady, yes.

Q. When you tested the seams of the deck at Rotterdam did you find any of them open?

A. No, nothing.

Q. Did any of them have to be caulked at that time in Rotterdam? A. I don't know.

Q. Did you caulk any of them at Rotterdam?

A. No, sir, I only tried them.

Q. Did you find all of them in good condition?

A. All good.

Q. Nothing was done on the seams of the deck at Rotterdam, as far as you know?

A. As far as I know they were good.

Q. You stated, did you not, that you washed the decks at Rotterdam and went below and looked to see if there was any leak. Who washed the deck—yourself?

A. No, sir, I had nothing to do with the deck.

Q. They were washed by the crew?

A. Yes, sir.

(Deposition of Jan Olsson.)

Q. In the ordinary way to keep them clean?

A. To keep them clean.

Q. They were not tested to find out whether the seams leaked?      A. No, sir.

Q. Did you say you were in charge of the ventilators on the ship?      A. Yes, sir.

Q. How many ventilators are there?      A. Five.

Q. How many communicating with the general cargo in the center of [230] the ship?

A. Only one.

Q. And the other four communicated with the coke, did they not?      A. Yes, sir.

Q. Were all of those five ventilators of the same kind?

A. No, sir. The main ventilator was bigger than the two fore and aft. Those are smaller.

Q. Did you examine the ventilators to find out whether there was any leak around the ventilators or deck before you left Rotterdam?      A. No, sir.

Q. Did you examine the ventilators for the purpose of finding out whether there was any leak in the ventilator itself or in any of the covers of the ventilator before you left Rotterdam?

A. Yes, sir. I examined them before I left Rotterdam, and there was no leak at all.

Q. Did you examine the covers to see if they were rusty?      A. Yes, sir. I examined the covers, too.

Q. Some of the covers you examined?

A. Yes, sir.

Q. What kind of covers were there on the main ventilator?

(Deposition of Jan Olsson.)

A. A big wooden plug first and three covers on top of that.

Q. What are those three covers made of?

A. They are made of canvas.

Q. Did you examine the wooden plugs before you left Rotterdam? Did you try any water on it to see if any water could get through it into the ventilator?

A. Yes, sir; the water could not go through the wooden plug.

Q. You made a test? A. Of what?

Q. You made a test of water on the wooden plug to see if there was any leak? A. No, sir.

Q. You did not test it? A. No, sir. [231]

Q. Did you make any examination to find out whether the plug fitted tight into the ventilator?

A. The plug fitted tight but not as tight so that they could stop the water. The plug is only to stop the canvas so that in a heavy sea it does not smash the canvas.

Q. The first cover over the opening is a canvas cover and then comes the plug on top of that?

A. No, sir. First the plug and after that is the canvas; three.

Q. You do not expect the plug to be water-tight?

A. No, sir.

Q. Do you know whether any water went into the hold through the hatches during this voyage?

A. No, sir.

Q. What do you mean, that none went through?

A. I did not see any go through.

Q. Are you sure that none went through the

(Deposition of Jan Olsson.)

hatches? A. Yes, sir; I am sure of that.

Q. Are you sure that water went through the ventilator during the voyage?

A. I am not sure, but I do not see no water through.

Q. What is your opinion as to whether water went through the ventilator into the hold? Have you got an opinion?

A. No, sir. I do not see no water going down.

Q. Have you any opinion as to whether water went down through the ventilator into the hold or not? Have you any opinion about it?

A. What opinion?

Q. Have you any opinion as to whether water went down through the ventilator into the hold during the voyage?

A. No, sir. I never seen no water went down. I do not see no water at all went down.

Q. You don't think that any went down through the ventilator, do you? A. No, sir.

Q. Do you think that any water went down through the hatches? A. No, sir. [232]

Q. Do you think that any salt water entered into the hold of this ship through the seams during the voyage? A. Only them seams that I saw leaking.

Q. Do you think that much water got through those seams? A. No, sir.

Q. You examined those seams after you came to San Francisco, didn't you? A. Yes, sir.

Q. And none of them were open, were they?

A. No, sir; they were just slack, so I had to caulk them.



(Deposition of Jan Olsson.)

Q. Do you think any more water could have gotten through those seams than mere drops of water?

A. I don't know.

Q. Very little, in fact, was it not?

A. I suppose so; it could not be much.

Q. Had you been around the Horn at all before this last voyage?     A. Yes, sir.

Q. How often?     A. Once before.

Q. Was this last voyage stormier than the one before?     A. Oh, yes.

Q. Did you go down into the hold of the ship after the coke cargo was out of it?     A. Yes, sir.

Q. Did you notice any dampness around on the ceiling?

A. No, sir, I did not take notice of it. I don't look for it.

Q. Did you notice any dampness on the sides of the ship?     A. I did not look for it.

Q. Did you notice any dampness where the general cargo was stowed?     A. I don't look for it.

Q. You did not see any dampness at all?

A. No, sir. I don't look for it.

Q. If there had been much you would have noticed it, wouldn't you?     A. Sure.

Q. Do you think there was much when you went down there? [233]

A. I did not look for it.

Q. Now, you say you went down through the ventilator on the top of the water tank during the voyage?     A. Yes, sir.

Q. How often did you do that?

(Deposition of Jan Olsson.)

A. I am not sure how many times I was down there. I was down there a couple of times.

Q. What was the reason for your going down there at those times?

A. You could lift the top part of the ventilator off and after that you can go right down.

Q. Why did you go down during the voyage? Why?

A. I was down there after the bad weather, 10 days afterwards.

Q. At that time the main hatch was sealed, was it?

A. Sealed?

Q. Closed? A. Yes, sir.

Q. Was it sealed or battened down?

A. Battened down.

Q. You were in charge of the main hatch also, were you not?

A. I had charge of all the hatches. The fore and after hatch was open all the time, night and day, and the main hatch in fine weather I opened.

Q. How many days during the voyage was the main hatch closed up, would you say, half the voyage or three-quarters of the voyage, or what would you say about it?

A. I don't know about that; only in fine weather they were open, and most of the main hatch was battened down almost all the time.

Q. Do you mean that the main hatch is closed during most of the voyage? A. Yes, sir.

Q. It is tightly closed during most of the voyage, and only once in a while it is opened in fine

(Deposition of Jan Olsson.)

weather?      A. Yes, sir.

Q. When you went down the ventilator to the top of the tank it was very dark down there, was it not?

A. It was dark; yes. I took a piece of candle down. [234]

Q. What is the top of the tank made of?

A. Iron.

Q. And you say that you noticed it was wet?

A. Yes, sir, it was wet, and the wood, the case was wet too.

Q. What case do you mean?

A. There is a case right from the deck for the pumps, the pump case.

Q. The pump case was wet?      A. Yes, sir.

Q. That pump case comes right out above the deck, does it not?      A. Yes, sir.

Q. On the deck of the ship?      A. Yes, sir.

Q. Was that pump case wet all around the ship, did you notice?

A. I did not notice if it was all around; I see that it was wet.

Q. You did not notice whether that was wet. Is that pump case standing on top of the tank?

A. No, sir.

Q. By the side of the tank?

A. By the side, in the forward part.

Q. What is the distance between the case and the break of the tank; how far forward is the pump case?

A. About this far (illustrating).

Q. About two or three feet?

A. I don't know; I never measured it.

(Deposition of Jan Olsson.)

Q. I just want to know, about. Is it two or three feet, or more or less? A. About two feet.

Q. Is there any cargo between the two?

A. No, sir.

Q. That was a vacant space, was it—it was left vacant?

A. The tank comes there and the case comes there.

Q. Then the space between the tank and the case is not filled up with cargo? A. No, sir.

Mr. LILLICK.—Q. It was wide enough for you to get down between?

A. Yes, sir; there are two pipes for the pump there.

Mr. HENGSTLER.—Q. When you are down between the two cases are you right on the bottom of the hold?

A. Yes, sir, right on the bottom of the hold; right on the bottom of the ship. [235]

Q. Were you surprised to find that the top of that tank was wet when you went down or did you expect that?

A. I don't know; I didn't take notice of it. I see that it was wet and that is all I took notice of.

Q. Was it very wet or simply a little damp?

A. Damp and wet; only wet.

Q. There was no pool of water there?

A. No, sir.

Q. Just damp to the touch? A. Just damp.

Q. Do you know what the deck of your ship is made of, whether it is made of iron or wood?

A. The deck?

(Deposition of Jan Olsson.)

Q. Yes.      A. Wood.

Q. When you are down in the bottom of your ship and look up at the deck the deck is streaked and stained all over?      A. Yes, sir.

Q. It is not clean inside?      A. Oh, yes.

Q. Can you tell in looking up whether there is any mark that was made by water during that voyage?

A. Yes, sir, after we got the cargo out.

Q. Is it painted at all?      A. No, sir.

Q. What is it—rough wood?

A. What they call pine.

Q. Just rough pine, is it?

A. I don't know what wood.

Q. It is not painted however?

A. Not painted.

Q. It is just the natural color of the wood?

A. Just plain.

Q. Just the plain color of the wood?

A. Yes, sir.

Q. And has been so for years?

A. I don't know. I suppose so.

Q. It is really dirty looking, as a matter of fact?

A. No, sir.

Q. It has a good many different colors?

A. Yes, sir.

Q. Black and gray and dark?

A. No, sir, not gray. Black in some places.

Q. Did you take any look at the bulkhead that was between the coke and the general cargo—the cement?      A. What look? [236]

Q. At the partition? Who made the partition in



(Deposition of Jan Olsson.)

the ship? A. I made it. I put the bulkheads up.

Q. How long before you left Rotterdam?

A. I forget now. I could not tell you how long it was. Two or three weeks, I think, before.

Q. You put both of them in?

A. I put both of them in.

Q. What size planks were used in the making of those bulkheads?

A. The stanchions were 7 inches broad plank and 3 inches thick.

Q. Those are the stanchions? A. Yes, sir.

Q. But the boards themselves were what?

A. The board was an inch board.

Q. And how wide? A. 7 inches wide.

Q. And one inch thick? A. Yes, sir.

Q. The boards stand on end on the bottom, don't they?

A. No, sir; they come like that (illustrating).

Q. Athwartships? A. Yes, sir.

Q. The boards are laid horizontally athwartships?

A. Yes, sir.

Q. Do they stand up this way (illustrating)?

A. No, sir; this way (illustrating).

Q. Here is the ship and the board is this way?

A. Yes, sir.

Q. Do you know what horizontal is?

A. Yes, sir.

Q. Are the boards horizontal or vertical?

A. This way; horizontal.

Q. Are the boards dovetailed into each other?

A. Yes, sir.

(Deposition of Jan Olsson.)

Q. Do you know what dovetailed means?

A. Yes, sir—no, they were not dovetailed. They were not tongue and groove.

Q. They were just one placed on top of the other one?

A. Yes, sir, just one *place* on top of the other one.

Q. Were they nailed together? Was the one on top nailed on to the one below it, or were they just placed naturally one on top of the other?

A. Yes, sir. [237]

Q. Just naturally one was put on top of the other?

A. Just nailed to the stanchions.

Q. But no nails between the boards?

A. No, sir.

Q. How high did the bulkhead extend with reference to the ceiling? A. I don't know.

Q. How much space was between the top of the bulkhead and the ceiling, how many feet?

A. I don't know.

Q. One foot or three feet, or how many feet were there—have you any idea—between the top of the bulkhead and the deck?

A. They were right close up to the deck.

Q. Did it come up to a rafter on the deck, or did it come up to the deck itself?

A. It was fitted to the deck.

Q. Was there any space between the top of the bulkhead and the deck?

A. No, sir, all tight.

Q. There are a few places, are there not, where it is not tight, where there is a little crack?

(Deposition of Jan Olsson.)

A. I don't see any hole at all.

Q. Would you not expect that there would be a crack between these boards or between the top board and the deck, a small crack?

A. No, sir. I did not see no crack.

Q. You did not see any? A. No, sir.

Q. As a carpenter, would you not expect there would be such if those planks shrunk during the voyage? They shrink a little? A. No, sir.

Q. When they pass through the equator don't they shrink? A. No, sir.

Q. Are you sure about that?

A. I am not sure.

Q. Don't you know, Mr. Olsson, all wood shrinks when it is exposed to heat? A. No, sir.

Q. It warps, does it not? All wood warps when it is exposed to heat? A. Yes, sir. [238]

Q. Would you not expect a bulkhead of that sort to warp when it passes through the heat of the equator? A. I don't know.

Q. You don't know whether it did warp or not, but it is to be expected that it warps in the heat? To a certain extent, I do not mean altogether; a little it warps? A. I don't think so.

Q. As a carpenter have you ever built a house?

A. Yes, sir.

Q. You know that after a house is built very often the woodwork shrinks and warps, does it not?

A. Yes, sir.

Q. The window frames warp? A. Yes, sir.

Q. Don't bulkheads do that too, especially when

(Deposition of Jan Olsson.)

the ship passes through the equator?

A. Yes, sir; if they are all tight there is nowhere to go.

Q. Wooden bulkheads. A. Yes, sir.

Q. Are you familiar with coke? A. No, sir.

Q. Have you ever seen coke in a ship before?

A. Yes, sir.

Q. Do you know whether or not it contains water?

A. No, sir. I don't know anything about that.

Redirect Examination.

Mr. LILLICK.—Q. These stanchions on which the bulkhead was nailed were how far apart?

A. About four feet—4 or 5; I am not sure.

Q. How many nails did you put in each board in each stanchion? A. Two.

Q. How were the nails driven? As to down or straight in? A. Some straight in.

Q. Did you try to make the bulkhead tight or just nail it up to put the boards on?

A. I tried to make it tight and got it tight.

Q. Were the edges of the boards smooth or were they rough? A. They were smooth.

Q. Did you look to see whether you could see light between the [239] boards after they were up?

A. I looked but I could see no light.

Q. Each board was snug on the other?

A. On the other. I tried them together.

Q. Was anything put over the boards afterwards?

A. Afterwards the mat.

Q. Who put that mat on?

A. The crew put the mat on. I put some on too.

(Deposition of Jan Olsson.)

Q. How was it put on the bulkhead?

A. From the inside of the general cargo, right from the bottom up.

Q. Was it tacked on the bulkhead or thrown over the cargo? A. It was nailed to the bulkhead.

Q. Are you sure there was no opening up at the deck where the bulkhead joined on it?

A. There was no opening.

Q. Did you have to fit the boards in in any way where the boards crossed the deck?

A. Yes, sir; I fitted the boards in.

Q. You say you looked at the deck before you left Rotterdam. Was there any difference in the color when you arrived here in San Francisco from what it was when you were in Rotterdam? A. Yes, sir.

Q. What was the difference?

A. You could see the difference that there was no mark in Rotterdam at all of the water, and here there was a mark; plenty marks I could see here.

Q. Do you know how much water came through?

A. I don't know.

Q. You don't know whether it just dripped through or whether there were little streams of water that came through?

Mr. HENGSTLER.—He has said a half a dozen times he does not know.

A. I can only say that the water came through.

Mr. LILLICK.—Q. Going back to that ventilator, how many canvas covers were there over the wood after the wood was put in place?

A. Three. [240]



(Deposition of Jan Olsson.)

Q. You testified that there was water on the tank below. Where do you think that the water came from? A. I don't know.

Q. Where in your opinion did the water come from?

Mr. HENGSTLER.—He says "I don't know."

Mr. LILLICK.—I am going to ask the question over again.

Q. You did not expect to find water on that tank, did you?

A. I seen this wet and that is all I took notice of.

Q. Don't you think where it came from?

A. I don't know.

Q. In your opinion where did it come from?

Mr. HENGSTLER.—You have asked him that half a dozen times.

Mr. LILLICK.—He must have some opinion about it.

Mr. HENGSTLER.—He has said he has not, and he doesn't know. If you ask him half a dozen times more I suppose you can get some kind of an answer out of him.

Mr. LILLICK.—I want him to answer the last question.

Mr. HENGSTLER.—He has answered it very frequently.

Mr. LILLICK.—Read the question, Mr. Reporter. (The reporter reads the previous question.)

A. I don't know.

Q. Was the main hatch open when you went down on that day that you saw the water on the tank?

(Deposition of Jan Olsson.)

A. No, sir.

Q. Was it fine weather that day?

A. Yes, sir—not very fine though. There was water on deck; it was shipping a little water.

Q. Do you know whether that main hatch was always open in fine weather?

A. Yes, sir, in fine weather.

Q. Did you notice when you went down on that day when you found the water there whether there was any water on the wooden casing around the tanks?

A. There was water on the wooden casing.

Q. How is that wooden casing put around the water-tank; is it closed? A. No, sir. [241]

Mr. HENGSTLER.—Q. It is not around the water-tanks.

A. There is a batten around the water-tanks.

Mr. LILLICK.—Q. How did the battens run, up and down? A. Up and down.

Q. How big were they?

A. About 5 or 6 inch battens; one coming there and a place open about 6 or 7 inches, and then another batten comes, and a batten all around the tank, right around.

Q. But with those battens running up and down?

A. Yes, sir, up and down.

Q. Did you notice whether all of those battens were wet? A. I don't know.

Q. Did you see water on the battens?

A. No, sir; I didn't look there.

Q. Did you see if the wood was wet or not?

(Deposition of Jan Olsson.)

A. The tanks don't go right up to the deck; they only go to the between-decks.

Q. But these battens, did you notice whether any of them were wet?

A. I see some wet; that is all I take notice of there.

Q. Did you notice whether any of the wood was wet? A. Yes, sir, the wood was wet.

Mr. HENGSTLER.—Q. What wood? The wood of the casing or the wood on the tank?

A. On the tanks and the casing.

Mr. LILLICK.—Q. When you went down that day did you go down between the pump casing and the tank or did you go down in the casing of the tank?

A. No, sir, I don't went no further. I can see the bottom of the ship from the top of the tank.

Q. You only went to the top of the tank?

A. I got a piece of candle and I could see the bottom of the ship.

Q. The water that you say you saw on the tank, was it enough so that it wet your hand?

A. Yes, sir; it made my hands wet. [242]

Q. Would you say it was damp, or would you say there was water there?

A. I believe there was water. The wood was wet, but the wood don't sweat.

Q. What did you say about sweat?

A. Wood don't sweat.

Q. Do you know the difference between sweat in a vessel and the way it looks, and how wood looks when it is wet?

Mr. HENGSTLER.—No one can know the difference.

(Deposition of Jan Olsson.)

A. No, sir.

Mr. LILLICK.—Q. Do you know whether that water that was there was sweat or whether it was not? A. I don't know.

Q. You do not know? A. No, sir.

Mr. HENGSTLER.—Q. There was not any pool there? A. No, sir.

Q. It just felt wet to the hands? A. Yes, sir.

Mr. LILLICK.—Q. There was enough water there to wet your clothes when you sat down in it?

A. Oh, no.

Recross-examination.

Mr. HENGSTLER.—Q. How many stanchions did you put across the ship from side to side; how many stanchions were put in there altogether? A. 14.

Q. Altogether 14 stanchions?

A. Yes, sir; from one side to another, 14 stanchions.

Q. How long were those boards which you laid across? A. 22 feet long.

Q. Did each board reach all the width of the ship?

A. No, sir, from the middle.

Q. They were two put together? A. Yes, sir.

Q. When the two met in the middle, were they nailed together or just fitted together?

A. Just fitted together, in the middle of the stanchion and nailed.

Q. Nailed in the middle of the stanchion?

A. Yes, sir. [243]

Q. Then the ends which went out on the wings and the sides of the ship, were they fastened on to the

(Deposition of Jan Olsson.)

sides of the ship?      A. They would fit on.

Q. In what way?

A. Just fit on in a proper tight.

Q. What do you mean by that, that you sawed them off?      A. Yes, sir, I saw them off.

Q. You sawed the corners off where it was necessary?      A. Yes, sir.

Q. Was the forward bulkhead forward of this case that you speak of or aft of the case, or did the bulkhead go right through the case?

A. No, sir; the case was in the middle between the two bulkheads.

Q. It was right inside of the space where the general cargo was?      A. Yes, sir.

**[Deposition of John Baxter, for Respondent  
(Recalled).]**

JOHN BAXTER, recalled.

Mr. LILLICK.—Q. I call your attention to the log of March 3, and the item “Westerly sea, shipping heavy water.” Will you tell us how long that continued? I mean with reference only to shipping water.      A. That was coming out of the channel.

Mr. HENGSTLER.—What date was that on?

Mr. LILLICK.—March 3d.

A. She was diving into a very very heavy head sea on leaving the channel at that time.

Q. How far would that water go over the deck of your vessel?

A. It would shoot right aft. It comes over the forecastle-head and sweeps right along past amidships.



(Deposition of John Baxter.)

Q. I call your attention to the log and the item of March 4th, 1910, "Moderate gale, with heavy westerly sea. Ship diving heavy and shipping heavy water." [244]

A. That was just the same. We had to shorten sail on that account, because she was diving heavy and liable to break things up.

Q. What does that mean with reference to the deck of the vessel and the water upon it in regard to how long the water stays on the deck of the vessel?

A. In a case like this, when she was diving, the water would be on deck all the time. It was continuously coming over. Every sea that comes along she shoots right under it and the water comes aboard, and before she gets clear of one sea there is another that comes over the forecastle-head.

Q. I call your attention to the log and the items on May 5th, 1910; will you describe in a general way the situation with regard to the water on the deck at that time?

A. The ship was full up with water; the main deck was full up all the time.

Q. Upon that particular occasion was there any unusual wave that struck the vessel?

A. There was one that came over the forecastle-head, a very high one, that carried away the bell on the belfry. I suppose it was the same sea; it might have been another one, that carried away the chocks of the boat, smashing the bridge, washed away the skylight gratings which went overboard.

Q. How high up did that go with reference to the sails?

(Deposition of John Baxter.)

A. The square sails. You do not mean the square sails?

Q. I mean any of the sails?

A. It struck the head sails on the bowsprit, the main jib and foretop and staysail.

Q. And what was the result?

Mr. HENGSTLER.—Q. That is nothing very unusual is it? A. It is.

Q. It happens in every storm?

A. No, sir, not to wash a sail away with a sea like that.

Mr. LILLICK.—I never heard of it being done.

[245]

A. I have seen sea going up in a square sail, but that was a spray. This was a monster sea that came along.

Q. What did it do with reference to sails?

A. It bust those two head sails.

Q. Were they broken by the sea or by the wind?

A. By the sea.

Q. During that time and the following day when the log states "sea shipping heavy, heavy water," what was the condition of the deck?

A. The ship was lying wallowing in the sea all the time.

Mr. HENGSTLER.—Q. For how many days?

A. Three days.

Mr. LILLICK.—Q. By that you do not mean to qualify the items in the log when on other days and on other occasions the log states that the sea was coming aboard.

(Deposition of John Baxter.)

A. I don't understand how you mean.

Q. Where the log upon other days shows that the ship was shipping heavy water you do not mean to qualify those statements in any way and say that the log is incorrect?

A. No, sir; certainly not.

Q. Where the log states that to be a fact it was a fact?

A. Most decidedly so.

Cross-examination.

Mr. HENGSTLER.—Q. During this stormy time did she pitch to any considerable extent?

A. She did at first, the first part of it.

Q. Did she roll any?

A. She lurched to leeward.

Q. But the wind remained steady and she did not roll?

A. She lurched to leeward, laboring, the same as they do in heavy weather and a very high sea.

Q. Did she go over on her beam ends?

A. No, sir.

Q. The storm was not big enough for that?

A. I should think not. She would not go on her beam ends unless she shifts her cargo. Either that, or she has a light cargo and will not stand up to it.

[246]

Redirect Examination.

Mr. LILLICK.—Q. Did this lurching or pitching differ in any particular from the rolling and pitching of any well-stowed vessel in a sea of that character?

A. No, sir.

**[Deposition of Robert Conchar, for Respondent.]**

ROBERT CONCHAR, called for the respondent, sworn.

Mr. LILLICK.—Q. What is your age?     A. 19.

Q. And your occupation?     A. Apprentice.

Q. How long have you been on the “Dolbadarn Castle”?

A. Three and a half years.

Q. Did you have occasion to go into the hold of the vessel in Rotterdam before she started on this voyage?

A. Once or twice before the cargo was loaded.

Q. During those one or two days did you look up at the deck at all to notice the seams or the color of the deck?

A. No, I never took any notice.

Q. Were you there when the coke was being loaded on the vessel?

A. Yes, sir.

Q. What was the condition of the weather?

A. It was fine.

Q. Did you notice whether the coke was wet or whether it was dry?

A. It was dry.

Q. Why do you say it was dry? Have you any reason for it?

A. Yes, sir, very dusty; plenty of dust coming down as it was sliding down the chutes.

Q. When you arrived in San Francisco did you go below at any time and look up at the deck and see its condition?

A. Yes, sir.

Q. Will you tell us in your own words what was the condition of the deck, how it looked to you?

A. It was stained in various places with water.

(Deposition of Robert Conchar.)

Q. Why do you say it was water?

A. It could not have been anything else but water.

Q. With reference to where it was in the deck, was it near the seams or away from it?

A. It was around the seams.

Q. Was it damp at the time or only discolorations?

A. Discolorations.

Q. Did you notice the sides of the compartment where the general cargo was stowed to see whether the sides of the vessel were damp or not?

A. The sides of the vessel were quite dry.

Q. Did you look to see whether there had been any water upon the sides of the vessel?

A. No, sir; I took no notice of it.

Q. Do you know anything about the tanks next to where this general cargo was stowed with reference to whether they evidenced signs of water having been on them?

A. Yes, sir; there were stains on both sides.

Q. Were there any stains on the battens running up and down about those tanks?

A. I did not notice the battens. The battens were light painted and would not show the discolorations.

Q. What was the character of the stains on the tank with reference to size?

A. They run the whole way down the sides of the tank, the discolorations.

Q. Did you notice the cement as it was being discharged?

A. No, sir; I had nothing to do with that.

Q. Do you know anything about the condition of



(Deposition of Robert Conchar.)

the plates as they were discharged?

A. I saw them on the wharf; several of them were decidedly rusty.

Q. On what portion of the plate was the rust?

A. Some was around the edges and some ran right across in places.

Q. Were you on board when the steel was being shipped at Rotterdam? [248] A. Yes, sir.

Q. Do you know anything about the condition of the steel plates as they were received at Rotterdam?

A. They were slightly rusty but not so bad as when they were discharged.

Q. You are speaking of your own knowledge are you? A. Yes, sir.

Mr. HENGSTLER.—I want to reserve an objection to any question of that sort on the ground that it would be evidence contradicting the bill of lading and on that account improper.

Cross-examination.

Mr. HENGSTLER.—Q. When you were here in San Francisco and went down into the hold after the cargo was out you looked up at the deck, did you?

A. Yes, sir.

Q. It was pretty dark down there at all times?

A. No, sir; there was plenty of light. There was no cargo in and the hatches were off.

Q. Can you see the seams when you look up?

A. Plainly.

Q. It is not a pretty dirty looking deck?

A. No, sir, not very dirty.

Q. Is it very clean?

(Deposition of Robert Conchar.)

A. You can see the grain of the wood plainly.

Q. Is it natural wood or painted?

A. Natural wood.

Q. Do you know how old that ship is?

A. She was launched in 1897.

Q. Had you observed the deck from below from the bottom of the hold before you came here to San Francisco at any time?     A. Not particularly.

Q. You do not know whether it looked any different here in San Francisco from what it did at any previous time, do you?

A. The stains were fresh, so that they would brush off to a certain extent. [249]

Q. Did you try to brush off some of those stains?

A. That was my work down below at the time. I was sweeping the deck.

Q. Did you brush some of the stains off?

A. Some of them, to a certain extent.

Q. With the fact that they brushed off you came to the conclusion that they were fresh; is that the idea?

A. That is so. Of course the deck had been brushed before.

Q. You could not tell whether those stains were sweat or salt water?

A. They were certainly not sweat.

Q. Why not?

A. Because sweat would not leave any deposit.

Q. There was a deposit there?

A. Yes, sir; that is what the stains were.

Q. What kind of a deposit?

(Deposition of Robert Conchar.)

A. It looked like a deposit of salt water.

Q. How does a deposit of salt water look?

A. Of course it is white from the salt.

Q. Is it all white?

A. If there is any dirt mixed with it, it depends what dirt is mixed with it, but it is white to a certain extent.

Q. The stains that you saw there were white stains there?     A. Yes, sir.

Q. If one of the other witnesses in the case said they were dark stains, he is mistaken, is he?

A. I could not say they were all white stains.

Q. There were some black stains too?

A. Dirty colored stains.

Q. Ordinarily, the ceiling that you see above you when you are down in the bottom of the ship is expected to be a pretty dirty affair?

A. Pretty dirty.

Q. You would expect it to be very dirty when the ship is 13 years [250] old?

A. No, sir. The hold is cleaned after every cargo.

Q. The lower part of the deck is cleaned out?

A. It is swept.

Q. Now, you say that you noticed stains on both sides of the tank in the middle compartment of the ship?     A. Yes, sir.

Q. Do you know how those were caused?

A. Only by water running down the side it could possibly have been caused.

Q. Do you know what kind of water it was, whether it was salt water or fresh water?

(Deposition of Robert Conchar.)

A. I could not say as to that. I concluded it was salt water.

Q. Why? A. Because it left stains.

Q. What kind of stains were those, also white stains?

A. Discolorations of no particular color; discolored paint.

Q. Can you tell salt-water stains from fresh-water stains when you see them on wood or on iron?

A. I have only seen salt-water stains.

Q. You have never seen any but salt-water stains?

A. When fresh water has been on anything I have not noticed that it has stained it.

Q. Fresh water would not stain it? A. No, sir.

Q. From the fact then that you saw stains you conclude that there must have been salt water; that is all you know about it? Simply because there were stains, therefore they were caused by salt water; that is your idea, is it not? A. Yes, sir.

Redirect Examination.

Mr. LILLICK.—Q. In forming that impression, did the knowledge that the vessel had shipped heavy seas and that the deck was awash during portions of your voyage have anything to do with the deductions that the stains were from salt water?

A. That is what made me think so.

Q. Can you give us any comparative idea of the number of seams [251] over the general cargo which showed those discolorations?

A. I don't quite understand.

Q. Can you tell us approximately how many seams

(Deposition of Robert Conchar.)

over where the general cargo was stowed, and by that I mean the cement—showed these stains?

A. I could not. I only know they were scattered through various portions of the hold.

Recross-examination.

Mr. HENGSTLER.—Q. Did you notice the same stains in the deck above the space where the coke was stowed? A. Yes, sir.

Q. It was all over the ship, was it not?

A. Yes, sir.

Q. The stains extended all over the lower side?

A. Over portions; not all over.

Q. Where are the most, in the wings of the ship or around the mast?

A. In the wings and some were around the mast.

[252]

### Respondent's Exhibit "B" [Charter-party].

LI

Antony Gibbs & Sons

Gibbs & Co. { Valparaiso.  
Iquique.  
Antofagasta.

R. THOMAS & CO.

30 Nov. 1909.

26 Chapel St., Liverpool.

Gibbs, Bright & Co. { Melbourne.  
Sydney.  
Brisbane.  
Adelaide.  
Newcastle, N. S. W.

ANTWERP—SAN FRANCISCO.

CHARTER PARTY.

LONDON, 17th November, 1909.

IT IS THIS DAY MUTUALLY AGREED between Dolbadarn Castle Ship Coy Ltd Messrs. R. Thomas & Co. Managers for Owners or agents of the good ship or vessel called the "Dolbadarn Castle"



classed 100 AI Lloyds of the measurement of 1860 tons net register or thereabouts, now on passage Tal-tal to Rotterdam and PARROTT & CO., of San Francisco, Merchants and Charterers.

1. That the said vessel being kept tight, staunch, strong, and in every way fitted for the voyage shall after discharge of present cargo with all convenient speed proceed to such usual loading berth at ~~ANTWERP~~ ROTTERDAM (always afloat) alongside the rails as may be provided by the Harbour Master, and there receive on board, in the customary manner, from Charterers or agents, a full and complete cargo of say one thousand tons Iron—not unwieldy—and lawful merchandise (~~excluding Coal, Scrap iron and Explosives~~) or Cement, balance Coke, Beans & Girders excluded, which Charterers bind themselves to ship (not exceeding what can be reasonably stowed and carried over and above tackle, apparels, provisions and furniture) [253] completing at the river quay if full cargo cannot be loaded in the docks, and being so loaded shall proceed with dispatch to

#### SAN FRANCISCO—CALIFORNIA

to discharge at any safe wharf or place as customary within the Golden Gate where vessel can lie always afloat, delivering the cargo there, as directed by Charterers, at three wharves designated by Charterers or their agents, if more than two wharves extra towage incurred to be for Charterer's account.

2. Freight to be paid at the rate of Eighteen Shillings (18/=) per ton of 2240 lbs. delivered on final and true delivery of the cargo; payable in

United States gold coin at the rate of \$4.80 to the £ sterling.

3. Charterers to pay all dues and duties on the cargo, and the vessel all other charges excepting lighterage, if any, which is to be at the risk and expense of Charterers. The Master or Owners to have an absolute lien on cargo for freight, dead freight, demurrage, damages for detention or delay, and average, if any, under this charter. Charterers to supply such cargo as will enable vessel to be loaded to the proper marks or dead freight to be paid. Only such cargo to be tendered as will go down vessel's hatches and any piece over two tons to be put on board and taken out at risk of Charterers and any extra expense to be paid by them. The vessel to proceed to any crane as required. Charterers' responsibility to cease on completion of loading. Dunnage or mats, if required, to be furnished by Owners.

4. Should vessel not ~~arrive at port of loading~~ at or  
be ready to load  
before sundown on 31st January 1910 Charterers to have the option of cancelling or maintaining this charter.

5. Charterers to be allowed Twenty (20) weather working days [254] for loading, with two days extra, to be computed from the time vessel is in loading berth as provided above, with inward cargo and/or ballast finally discharged and the hold clean and ready for cargo, the Master having given 24 hours' notice thereof in writing to Charterers or agents. Sundays, legal holidays and time occupied

in shifting not to be counted as lay days for loading or discharging.

6. Cargo to be brought to and taken from alongside vessel at Charterers' risk and expense. Stiffening to be supplied by Charterers at ~~Antwerp~~ Rotterdam after seven days' notice has been given by Master of vessel's readiness to receive same, or lay days to count. Time occupied in taking stiffening not to count as lay days.

7. Owners to furnish a certificate from a competent surveyor of vessel's seaworthiness and condition to carry general cargo.

8. Lay days at port of loading not to commence before 1st December next except at Charterers' option.

9. Vessel to be discharged as customary at the average of not less than 100 tons per weather working day after vessel is in berth as directed by Charterers and ready to discharge, notice thereof having

10. ~~In the event of cargo being discharged at the average rate of not less than 150 tons per day, freight to be reduced three pence per ton. If discharged at the average rate 200 tons as above, freight to be reduced six pence per ton.~~

11. Demurrage to be paid vessel for each and every day used in loading or discharging beyond time provided above, at the rate of three pence per net register ton per diem.

12. The act of God, perils of the sea, fire, barratry of the Master or crew, enemies, pirates, assailing thieves, arrest and [255] restraint of princes,

rulers and people, collisions, stranding and other accidents of navigation excepted even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or other servants of the shipowner: also time lost through civil commotions, floods, frosts, snow, ice, detention of lighters or on the railway bringing cargo from works, storm, fog, accidents, strikes, lock-outs or any cause beyond the personal control of Owners or *Charters*, with relation to loading or discharging cargo, always mutually excepted throughout this charter.

13. Stevedore to be appointed by Charterers or their agents for loading ~~and discharge~~ of cargo, vessel to be loaded and discharged under the supervision and direction of the Master. Owners to pay for stowage of cargo at rate of one shilling per ton weight and measurement ~~and not exceeding the customary and usual rate for discharging~~; also usual advertising, printing and measurer's charges not exceeding £5.5, and customary rate on labourage at loading port to cover insurance of labourers. Ship's clerks for loading and discharging the cargo to be appointed by Charterers or their agents, cost not to exceed current rates, to be paid by Owners.

14. Should vessel discharge all or part of cargo at any wharf or place where no wharfage is charged, such saving to accrue to the Charterers. Half cost of weighing not exceeding six and one-half cents per ton to be paid by vessel on any cargo that may be actually weighed at port of discharge.

15. Bills of Lading, weight, measure and contents unknown, are to be signed by the Master at



request of Charterers or their agents in accordance with mate's receipts, at any rate of freight as presented by Charterers or agents, provided the same equal the amount of freight due under this charter. Any difference of [256] freight in favour of the vessel, between amount of charter and freight payable at port of discharge, according to Bills of Lading to be settled at port of loading less 6% to cover interest and insurance.

16. Average, if any, to be adjusted and settled in San Francisco as customary, according to York Antwerp rules of 1890. If the vessel puts into a port under average where there is telegraphic communication with Antwerp, the Master to wire Charterer's agents and to address his vessel to their representatives.

17. If required by Owners, Charterers to advance, in cash at ~~Antwerp~~ Rotterdam on sailing, one-third Half of the estimated freight less  $7\frac{1}{2}\%$  to cover all charges, Master to sign usual draft for amount advanced payable at first port of discharge at current rate of exchange for cable transfer. In the event of voyage being prolonged beyond six months then ordinary interest extra on the advance is to accrue until freight is earned.

18. Vessel to be consigned to Charterer's agents at port of loading for custom house business paying the usual fee of £5.5 and at port of discharge to PARROTT & CO. or their agents paying a commission of  $2\frac{1}{2}\%$  on the amount of freight and \$100 agency fee. ~~PARROTT & CO. have the privilege of chartering the vessel outwards from Pacific coast~~



ports, the owners paying them the customary chartering commission of  $1\frac{1}{4}\%$  or ——— if vessel is chartered past them.

19. A Brokerage of  $1\frac{1}{4}\%$  on this charter is due by Owners to ANTONY GIBBS & SONS, on completion of loading.

20. If any disputes arise at port of loading same to be settled at Antwerp by arbitration.

21. Penalty for non-performance of this agreement to be estimated amount of freight. [257]

DOLBADARN CASTLE SHIP COY. LTD.

(Sd) R. THOMAS & CO.,

Managers.

By Cable authority of Parrott & Co.,

San Francisco.

(Sd) ANTY GIBBS & SONS,

19/11/09,

As Agents for Charterers. [258]

**Respondent's Exhibit "C" [Bill of Lading].**

2

**CALIFORNIA TRADE BILL OF LADING.**

**JOHN P. BEST & CO.**

General Ship & Forwarding Agents.

**ANTWERP.**

Sailing Vessels.

Freight Payable at Port of Discharge.

**COPY NOT NEGOTIABLE.**

.....	cubic feet at	.....	per 40 c. f.	£	.....
.....	"	"	"	40	"
305.210	Kos at 18/-	per ton of 1016	Ko	"	279.4.5
.....	"	"	"	1000	"
			Minimum	"	.....
					£ 279.4.5
			Primage	"	.....
			Disbursements	"	.....
			Primage	"	.....
					£ 279.4.5

**SAY:**

Two hundred seventy-nine Pounds sterling

four Shillings

five Pence Brt. Stg. **PAY-**

**ABLE AT Destination. [259]**

**SHIPPED** in good order and condition by John T. Best & Co., (as agents) on board the good Ship Dolbadarn Castle whereof is Master for this present voyage, Baxter, lying in the port of ~~Antwerp~~ ROTTERDAM and bound for San Francisco (Cal.).

D G H Co. 2023 (Two thousand Twenty three)  
Sheets.

Kos 315.210

“In transit wholly or part”

—being marked and numbered as in the margin, and to be delivered (subject to the exceptions and stipulations hereinafter mentioned) in the like good order and condition, at the aforesaid port of San Francisco (Cal.) unto Order or to his or their assigns. Average as per York-Antwerp Rules 1890. Freight for the said Goods and primage together, to be paid on delivery, as per endorsement, in cash, without deduction, at the exchange of \$4.85 per pound sterling.

Consignees to pay double freight on all weight found over and above the weight entered on this Bill of Lading, and also any extra expenses incurred in connection with weighing, should the weight be found on landing to be in excess of that entered in Bill of Lading.

The following are the exceptions and stipulations referred to:—The act of God, the King's Enemies loss or damage from fire on board, in hulk or craft, or one shore, arrest and/or restraint of Princes, Rulers and People, Collision, any act, neglect, or default *wathsoever* of Pilot, Master or Crew in the management or Navigation of the Ship, and all and every danger and accidents of the Seas, Canals, and Rivers, and of navigation of whatever nature [260] or kind always mutually excepted. The vessel to have liberty to call at any ports in any order to sail without pilots and to tow and assist vessels in dis-

tress, and to deviate for the purpose of saving life or property.

The Ship is not liable for leakage, breakage, loss or damage by heat, sweat, rust, or decay, unless occasioned by improper stowage.

The Ship will not be liable for gold, silver, bullion, specie, jewellery, precious stones, or precious metals, unless Bills of Lading are signed for such goods, and the value declared therein.

If goods of a dangerous nature are shipped without being previously arranged for, they are liable to be thrown overboard, and their loss as well as any loss or damage to the Ship or cargo will fall upon the Shippers or Owners of such goods.

The Master is to deliver the Goods with all reasonable despatch; and the consignees are to be ready to receive them within forty-eight hours after the Ship commences to unload, otherwise the Master or Agent may discharge and store them at the expense and risk of the Owners of the Goods.

In witness whereof, the Master, Owner or Agent, of the said Ship, has signed three Bills of Lading, exclusive of the Master's copy, all of this tenor and date, one of which being accomplished, the others to stand void.

Weight, measure and contents, unknown.

Dated in ~~Antwerp~~ Rotterdam 19th February, 1910.

J. B. [261]

**Respondent's Exhibit "E" [Bill of Lading].**

5

**CALIFORNIA TRADE BILL OF LADING.****JOHN P. BEST & CO.**

General Ship &amp; Forwarding Agents.

**ANTWERP.**

Sailing Vessels.

Freight Payable at Port of Discharge.

.....	cubic feet at	.....	per 40 c. f.	£	.....
.....	"	"	"	40	"
499.500	Kos	at 18/-	per ton of 1016 Ko	"	442-9-5
.....	"	"	"	1000	"
			Minimum	"	.....
					£ 422-9-5
			Primage	"	.....
			Disbursements	"	.....
			Primage	"	.....
					£422:9:5

**SAY:**

Four hundred &amp; forty-two Pounds sterling

nine

Shillings

five

Pence Brt. Stg. PAY-

**ABLE AT Destination. [262]**

SHIPPED in good order and condition by the  
 Societe Anonyme de Niel-on-Rupell on board the  
 good Ship "Dolbadarn Castle" whereof is Master  
 for this present voyage, Baxter, lying in the port of



~~Antwerp~~ Rotterdam, and bound for San Francisco (Cal.)

LABEL JOSSON. 2775 (Two thousand seven hundred and seventy five) Barrels Cement  
Kos 499.500.

In transit wholly or part.

—being marked and numbered as in the margin, and to be delivered (subject to the exceptions and stipulations hereinafter mentioned) in the like good order and condition, at the aforesaid port of San Francisco unto order or to his or their assigns. Average as per York-Antwerp Rules 1890. Freight for the said Goods and primage together, to be paid on delivery, as per endorsement, in case, without deduction, at the exchange of \$4.85 per pound sterling.

[Stamped across face of above paragraphs:  
“COPY NOT NEGOTIABLE.”]

Consignees to pay double freight on all weight found over and above the weight entered on this Bill of Lading, and also any extra expenses incurred in connection with weighing, should the weight be found on landing to be in excess of that entered in Bill of Lading.

The following are the exceptions and stipulations referred to:—The act of God, the King's Enemies, loss or damage from fire on board, in bulk or craft, or on shore, arrest and/or restraint of Princes, Rulers and People, Collision, any act, neglect, or default *wathsoever* of Pilot, Master or Crew in the management or Navigation [263] of the Ship, and all and every danger and accidents of the Seas,

Canals, Rivers, and of navigation of whatever nature or kind always mutually excepted. The vessel to have liberty to call at any ports in any order to sail without pilots and to tow and assist vessels in distress, and to deviate for the purpose of saving life or property.

The Ship is not liable for leakage, breakage, loss or damage by heat, sweat, rust, or decay, unless occasioned by improper stowage.

The Ship will not be liable for gold, silver, bullion, specie, jewellery, precious stones, or precious metals, unless Bills of Lading are signed for such goods, and the value declared therein.

If goods of a dangerous nature are shipped without being previously arranged for, they are liable to be thrown overboard, and their loss as well as any loss or damage to the Ship or cargo will fall upon the Shippers or Owners of such goods.

The Master is to deliver the Goods with all reasonable despatch and the consignees are to be ready to receive them within forty-eight hours after the Ship commences to unload, otherwise the Master or Agent may discharge and store them at the expense and risk of the Owners of the Goods.

In witness whereof, the Master, Owner, or Agent, of the said Ship, has signed three Bills of Lading, exclusive of the Master's copy, all of this tenor and date, one of which being accomplished, the others to stand void.

Weight, measure and contents, unknown.

, Dated in ~~Antwerp~~ Rotterdam 19th February, 1910.

J. B. [264]

**[Respondent's Exhibit "I" [Declaration of Stevedore].**

Rotterdam, 22nd. February 1910      191  
Tulpstraat 17.

A. A. HOOGERWERFF,  
Stevedore.

Telephone 3054.

The Undersigned A. A. Hoogerwerff, licensed stevedore at the Port of Rotterdam, herewith declares to have loaded and stowed the cargo now on board of the British barque "DOLBADARN CASTLE" Captain John Baxter, consisting of Steelplates, Steelbars, Cement in casks, Pigiron and Coke.

That said cargo has been stowed in accordance with the rules to effect proper stowage and as is customary at this port and I further declare that to the best of my knowledge the said vessel is in an efficient state to make the intended voyage to San Francisco.

Licensed stevedore,

A. A. HOOGERWERFF. [265]

**[Certificate of U. S. Commissioner to Depositions of John Baxter et al.]**

United States of America,  
State and Northern District of California,  
City and County of San Francisco,—ss.

I, James P. Brown, Esq., a United States Commissioner for the Northern District of California, do hereby certify that the reason stated for taking the foregoing depositions is that the testimony of the

witnesses John Baxter, John Owen, Jan Olsson and Robert Conchar is material and necessary in the cause in the caption of the said depositions named and that they are bound on a voyage to sea and will be more than one hundred miles from the place of trial at the time of trial.

I further certify that on Thursday, September 15th, and Friday, September 16th, 1910, I was attended by L. T. Hengstler, Esq., proctor for the libellant, and Ira S. Lillick, Esq., proctor for the claimant, and by the witnesses, who were of sound mind and lawful age, and that the witnesses were by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause; that said depositions were, pursuant to the stipulation of the proctors for the respective parties hereto, taken in shorthand by Clement Bennett and afterwards reduced to typewriting; that the reading over and signing of said depositions of the witnesses was by the aforesaid stipulation expressly waived.

Accompanying the depositions and annexed thereto and forming a part thereof are Respondent's Exhibits "A," "B," "C," "D," "F," "G" and "H" ("F" and "G" being retained in the possession of counsel, to be produced at the time of the trial), introduced in connection therewith and referred to and specified therein. [266]

I further certify that I have retained the said depositions in my possession for the purpose of delivering the same with my own hand to the United States District Court for the Northern District of California, the court for which the same were taken.

And I further certify that I am not of counsel nor attorney for any of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto subscribed my hand at my office in the City and County of San Francisco, State of California, this 28 day of September, 1910.

[Seal] JAS. P. BROWN,  
United States Commissioner, Northern District of  
California, at San Francisco.

[Endorsed]: Filed Sep. 28, 1910. Jas. P. Brown,  
Clerk. By Francis Krull, Deputy Clerk. [267]

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*In the District Court of the United States, in and for  
the Northern District of California, First Division.*

IN ADMIRALTY—No. 15,073.

PARROTT & COMPANY, a Corporation,  
Libellant,

vs.

The British Bark "DOLBADARN CASTLE," Her  
Tackle, etc.,

Respondent.

**Opinion.**

ANDROS & HENGSTLER, Proctors for Libellant.

IRA S. LILLICK, Proctor for Respondent.

This is a libel for damage to a cargo consisting of cement and steel plates, shipped from Rotterdam



to San Francisco. The libelant claims that the damage was the result of sweat occasioned by a quantity of coke constituting a portion of the cargo. The respondent claims that the damage was caused by sea water entering through seams in the deck and through the ventilator during extraordinarily heavy weather encountered on the voyage. The vessel was under charter to libelant, who selected the whole cargo, including the coke, so that no negligence may be imputed to the ship from the fact itself that coke formed a part of the cargo. The bill of lading provides that the cargo shall be delivered in like good order and condition as when received subject to certain exceptions among which are the "Act of God, and all and every danger and accidents of the seas." It further provides that the ship is not liable "for damage by heat, sweat or rust unless occasioned by improper stowage." The damage complained of was the caking of the [268] cement, and the rusting and pitting of the steel plates. This damage both to the cement and to the steel plates was occasioned by some form of moisture. If caused by the entrance of sea water, the ship cannot be held responsible, because the evidence is clear that whatever sea water entered did so by reason of the fact that the ship became strained by the storms and heavy seas encountered by her, and the damage falls within the first exception above noted. If the damage was caused by rust or sweat, then under the second exception the ship is not liable unless such sweat or rust was occasioned by improper stowage. The evidence offered by libelant tended to show that the

moisture which caused the caking of the cement and the rusting and pitting of the plates was the result of sweat arising from the cargo of coke. If it be conceded that this fact is established, the burden of proving that the damage from such sweat was occasioned by improper stowage is upon the libelant. For once the damage is brought within the exceptions of the bill of lading, the ship is exonerated unless the libelant show that notwithstanding such exception the ship is liable because of some negligence; in this case—the negligence of improper stowage. The testimony is very conflicting both as to the cause of the damage and the propriety or impropriety of the stowage. It appears, however, that the coke was stowed in the fore and after parts of the vessel, while the general cargo was carried amid-ships. The coke was separated from the general cargo by bulkheads made of boards placed one above the other, not dovetailed, but closely fitted, the whole being lined on the side next to the coke with dunnage mats. Respondent's witnesses testified that the boards were so closely fitted that daylight could not be seen through them, while the witnesses for libelant testified that [269] there were frequent interstices between the board and a considerable space between the top of the bulkheads and the deck. The bulkheads, however, were better ones for the purpose intended, than those generally in use at the time, and on the whole case I am not prepared to say that the stowage was not proper. My conclusions therefore are:

1. That part of the damage at least was due to sea

water forced through the deck and ventilator and is excused by the exception in the bill of lading covering "all and every danger and accidents of the seas."

2. That if any damage was caused by sweat it is excused by the exception covering "heat, sweat or rust" unless such damage were occasioned by improper stowage.

3. That the burden of showing such improper stowage is upon the libelant.

4. That such burden has not been satisfactorily sustained.

5. That for these reasons the libelant is not entitled to recover, and the libel must be dismissed.

January 22d, 1914.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Jan. 22, 1914. W. B. Maling,  
Clerk. By Francis Krull, Deputy Clerk. [270]

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*In the District Court of the United States, for the  
Northern District of California, First Division.*

IN ADMIRALTY—No. 15,073.

PARROTT & COMPANY, a Corporation,  
Libelant,

vs.

The British Bark "DOLBADARN CASTLE," Her  
Tackle, Apparel and Furniture,  
Respondent.

The DOLBADARN CASTLE SHIPPING COM-  
PANY, LTD., a Corporation,  
Claimant.

**Decree.**

This cause having been heard on the pleadings and proofs and argued by the proctors for the respective parties, and due deliberation being had in the premises, it is now

ORDERED, ADJUDGED AND DECREED by the Court that the libel filed herein be, and the same is hereby, dismissed with costs to be taxed against the libellant.

Dated: January 24, 1914.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Jan. 24, 1914. W. B. Maling,  
Clerk. By Francis Krull, Deputy Clerk. [271]

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*In the District Court of the United States, in and  
for the Northern District of California, First  
Division.*

IN ADMIRALTY—No. 15,073.

PARROTT & COMPANY, a Corporation,  
Libellant,

vs.

The British Ship "DOLBADARN CASTLE," Her  
Tackle, Apparel and Furniture,  
Respondent.

DOLBADARN CASTLE SHIPPING CO., LTD., a  
Corporation,

Claimant.

**Notice of Appeal.**

To Dolbadarn Castle Shipping Co., Ltd., a Corporation, and to Ira S. Lillick, Esq., Its Proctor, and to W. B. Maling, Clerk of the District Court of the United States, for the Northern District of California, First Division:

You and each of you, will please take notice that Parrott & Company, a corporation, libelant in the above-entitled cause, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the Final Decree of the District Court of the United States for the Northern District of California, entered in said cause on the 24th day of January, 1914.

Dated: February 17th, 1914.

ANDROS & HENGSTLER,

Proctors for Libelant.

Due service and receipt of a copy of the within notice of Appeal is hereby admitted this 17 day of February, 1914.

IRA S. LILLICK,

Proctor for Claimant. [272]

[Endorsed]: Filed Feb. 17, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [273]



*In the District Court of the United States, in and for the Northern District of California, First Division.*

IN ADMIRALTY—No. 15,073.

PARROTT & COMPANY, a Corporation,

Libelant,

vs.

The British Bark "DOLBADARN CASTLE," Her  
Tackle, etc.,

Respondent.

### **Assignment of Errors.**

The libelant, Parrott & Company, a corporation, hereby assigns errors in the proceedings of the District Court as follows:

1. The Court erred in holding that libelant was not entitled to recover from claimant the damage done to its cargo of cement and steel plates, shipped from Rotterdam to San Francisco.
2. The Court erred in entering the decree that libelant take nothing, and in dismissing its libel.
3. The Court erred in holding that part of the damage at least to libelant's cargo was due to sea water forced through the deck and ventilator of the ship.
4. The Court erred in not holding that, granting that part of the damage at least was due to sea water so as to be excused by the exception in the bill of lading, libelant was nevertheless entitled to recover the damage due to other causes.

5. The Court erred in holding that, if the damage was caused by rust or sweat, the ship was not liable unless [274] such sweat or rust was occasioned by improper stowage.
6. The Court erred in holding that the burden of improper stowage such as to cause sweat or rust was upon the libelant.
7. The Court erred in holding that, assuming that the burden of improper stowage such as to cause sweat or rust was upon the libelant, such burden has not been sustained by libelant.
8. The Court erred in holding that the burden of proving that the damage from sweat arising from the cargo of coke was occasioned by improper stowage was upon the libelant.
9. The Court erred in not finding, under the evidence, that the stowage of the cargo of the ship was not proper.
10. The Court erred in not holding that, on the whole case, the stowage of the cargo was not proper.
11. The Court erred in not entering its decree that libelant recover the damages suffered by libelant, as alleged and prayed in the libel.

Dated, San Francisco, May 14, 1914.

ANDROS & HENGSTLER,

Proctors for Libelant.

Due service and receipt of a copy of the within

Assignment of Errors is hereby admitted this 15th day of May, 1914.

IRA S. LILLICK,

J. A. O.,

Proctor for Respondent. [275]

[Endorsed]: Filed May 16, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [276]

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*In the District Court of the United States, in and  
for the Northern District of California, First  
Division.*

IN ADMIRALTY—No. 15,073.

PARROTT & COMPANY, a Corporation,

Libellant,

vs.

The British Ship "DOLBADARN CASTLE," Her  
Tackle, Apparel and Furniture,

Respondent.

DOLBADARN CASTLE SHIPPING CO., LTD., a  
Corporation,

Claimant.

**Stipulation and Order Concerning Original Exhibits.**

It is hereby stipulated and agreed between the proctors for the respective parties hereunto that all the exhibits introduced in evidence at the hearing of the above-entitled cause before the above court, and all the exhibits introduced in evidence before the Commissioner, may be detached from the depositions taken before the Commissioner and may be omitted from the Apostles on Appeal in said cause, and may

be filed in the United States Circuit Court of Appeals for the Ninth Circuit in the original form in which the same were respectively introduced before said Court and said Commissioner.

Dated May 23, 1914.

ANDROS & HENGSTLER,  
Proctors for Appellant.  
IRA S. LILLICK,  
Proctor for Appellee.

So ordered. May 26, 1914.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed May 26, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [277]

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*In the District Court of the United States, in and  
for the Northern District of California, First  
Division.*

IN ADMIRALTY—No. 15,073.

PARROTT & COMPANY, a Corporation,  
Libelant,

vs.

The British Ship "DOLBADARN CASTLE," Her  
Tackle, Apparel and Furniture,  
Respondent.

DOLBADARN CASTLE SHIPPING CO., LTD., a  
Corporation,  
Claimant.

**Stipulation [and Order Extending Time to April 17, 1914, to File Apostles on Appeal].**

It is hereby stipulated and agreed that libelant in the above-entitled case may have thirty (30) days from date hereof within which to procure the filing in the United States Circuit Court of Appeals for the Ninth Circuit of the apostles and record in said cause, with the certification of the above District Court thereunto attached.

Dated: March 18, 1914.

IRA S. LILLICK,  
Proctor for Respondent.

It is so ordered:

M. T. DOOLING,  
District Judge.

[Endorsed]: Filed Mar. 20, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [278]

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*In the District Court of the United States, in and  
for the Northern District of California, First  
Division.*

IN ADMIRALTY—No. 15,073.

PARROTT & COMPANY, a Corporation,  
Libelant,

vs.

The British Ship "DOLBADARN CASTLE," Her  
Tackle, Apparel and Furniture,  
Respondent.

DOLBADARN CASTLE SHIPPING CO., LTD., a  
Corporation,  
Claimant.



**Stipulation [and Order Extending Time to May 18, 1914, to File Apostles on Appeal].**

It is hereby stipulated and agreed that libelant in the above-entitled cause may have thirty (30) days from date hereof within which to procure the filing in the United States Circuit Court of Appeals for the Ninth Circuit of the apostles and record in said cause, with the certification of the above District Court thereunto attached.

Dated: April 18, 1914.

IRA S. LILLICK,  
Proctor for Respondent.

It is so ordered.

WM. W. MORROW,  
Judge United States Circuit Court of Appeals, Assigned to United States District Court.

[Endorsed]: Filed Apr. 22, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [279]

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*In the District Court of the United States, in and for the Northern District of California, First Division.*

No. 15,073.

PARROTT & COMPANY, a Corporation,  
Libelant,

vs.

The British Ship "DOLBADARN CASTLE," Her  
Tackle, Apparel and Furniture,  
Respondent.

DOLBADARN CASTLE SHIPPING CO., LTD., a  
Corporation,

Claimant.

**Stipulation [and Order Extending Time to June 1,  
1914, to File Apostles on Appeal].**

IT IS HEREBY STIPULATED AND AGREED that libelant in the above-entitled cause may have to and including June 1st, 1914, within which to procure the filing in the United States Circuit Court of Appeals for the Ninth Circuit of the apostles and record in said cause, with the certification of the above District Court thereunto attached.

Dated: May 18th, 1914.

IRA S. LILLICK,  
Proctor for Respondent.

It is so ordered.

M. T. DOOLING,  
Judge of Court.

[Endorsed]: Filed May 18, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [280]

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**[Certificate of Clerk U. S. District Court to Apostles  
on Appeal.]**

I, W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and hereunto annexed 280 pages, numbered from 1 to 280, inclusive, with the accompanying exhibits, 9 in number (transmitted under separate covers in their original form), contain a full, true and correct transcript of the records and proceedings as the same now remain on file and of record in the Clerk's Office of said District Court, in the cause entitled Parrott & Company, a corporation, vs. The British Bark "Dolbadarn

Castle," her tackle, etc., and numbered 15,073, and which said Apostles on Appeal is made up pursuant to and in accordance with "Praeceptum" (copy of which is embodied in said Transcript), and the instructions of Messrs. Andros and Hengstler, proctors for libellant and appellant herein.

I further certify that the costs of preparing and certifying the foregoing Apostles on Appeal is the sum of One Hundred Sixty-two Dollars and Sixty Cents (\$162.60), and that the same has been paid to me by the proctors for appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 28th day of May, A. D. 1914.

[Seal]

W. B. MALING,  
Clerk.

By Lyle S. Morris,

CMT.

Deputy Clerk. [281]

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[Endorsed]: No. 2430. United States Circuit Court of Appeals for the Ninth Circuit. Parrott & Company, a Corporation, Appellant, vs. Dolbadarn Castle Shipping Company, Limited, a Corporation, Claimant of the British Bark "Dolbadarn Castle," Her Tackle, Apparel and Furniture, Appellee. Apostles. Upon Appeal from the United States District Court for the Northern District of California, First Division.

Received and filed May 28, 1914.

FRANK D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.